UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555(JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

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United States Bankruptcy Court

One Bowling Green

New York, New York

July 14, 2010

10:03 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Motion of JPMorgan Chase Bank, N.A for Relief from the Automatic Stay

HEARING re Debtors' Motion for Authorization to Sell Its Limited Partnership Interest in New Silk Route PE Asia Fund, L.P.

HEARING re Debtors' Motion for Approval of Settlement Agreement Between Lehman Brothers Holdings Inc., Lehman Commercial Paper Inc., Silver Lake Credit Fund, L.P. and Silver Lake Financial Associates, L.P.

HEARING re LBHI's Motion for Authorization to Transfer Certain Mortgage Servicing Rights to Aurora Bank FSB

HEARING re Motion of the Chapter 11 Trustee of the SunCal Master Debtors for Relief from the Automatic Stay

HEARING re Debtors' Motion for an Order Enforcing the Automatic Stay Against Greenbrier Minerals Holdings, LLC

HEARING re Debtors' Motion to Compel Performance by Norton Gold Fields Limited of its Obligations Under an Executory Contract and to Enforce the Automatic Stay

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Be seated, please. Good morning.

MR. PEREZ: Good morning, Your Honor. Alfredo Perez on behalf of the debtors. Your Honor, the very first matter on the agenda is an uncontested matter. It's a stipulation lifting the automatic stay so that JPMorgan can proceed in a lawsuit. We have the stipulation ready to present if we can do that at the appropriate time.

THE COURT: Might as well do it now.

MR. PEREZ: Okay. Your Honor, this is -- in essence, BNC, which is one of the debtors, had originated a loan and foreclosed on a single asset, a home, and subsequently was sold to a securities agent trust and JPMorgan is now the holder of that loan. There's litigation between the homeowners and JPMorgan. BNC, the debtor, has no further interest in the property. And we just want to lift the stay so that they can proceed with their state court lawsuit.

THE COURT: That's fine.

MR. ZABICKI: Thank you. Just for the record, Your Honor, Eric Zabicki, of the firm Pick & Zabicki for JPMorgan Chase. No objection to the entry of the stipulation.

THE COURT: Fine. You can add the stipulation to other orders to be submitted at the end of today's hearing.

MR. PEREZ: Thank you, Your Honor. The next two matters are going to be handled by Mr. Fail.

MR. FAIL: Good morning, Your Honor. Garrett Fail, Weil Gotshal for the debtors. The next item on the agenda is a motion of Lehman Brothers Holdings Inc. for authorization to sell its limited partnership interest in New Silk Route PE Asia Fund, L.P. It is supported by the declaration of Christopher Mosher which was filed in support thereof. Mr. Mosher is present in the courtroom this morning.

As set forth in the motion and the declaration, LBHI seeks authorization to sell its limited partnership interest in an approximately 1.4 billion dollar India-focused first time private equity fund. This interest is one of many private equity investments that LBHI made prior to the commencement of these cases. LBHI's investment was made in April of 2007. Currently, LBHI's interest is represented by a commitment to contribute to the fund capital of up to 125 million dollars.

As of the commencement of the cases, LBHI funded approximately twenty-eight million dollars leaving an unfunded portion of approximately ninety-seven million dollars. LBHI proposes to sell the interest to Berkeley Investment Ltd. pursuant to a transfer agreement dated June 4, 2010 which was negotiated among LBHI, Berkeley and the fund's general partner. A copy of the agreement was attached to the motion.

Pursuant to the agreement, Berkeley will pay LBHI approximately 441,000 dollars and assume LBHI's outstanding and future contributions -- obligations to contribute capital to

the fund. The general partner will also withdraw its claim which has been numbered claim number 1011 -- 11,042 against LBHI.

As set forth in the motion and the declaration, the proposed sale represents the best opportunity to realize value from a diminishing asset. Absent the relief requested, the value of LBHI's interest will continue to erode as fees and expenses of the fund and other charges accrue against LBHI's investment. LBHI will recover none of the amount it has already funded and LBHI may be liable and ultimately required to make distributions to the fund for its claim.

Prior to filing the motion, LBHI approached over forty potential secondary buyers in an effort to market and sell its interest. In addition, LBHI solicited indications of interest through the motion. LBHI did not receive any interest other than the offer made by Berkeley.

In coming to its decision to enter into this transaction, LBHI coordinated with the creditors' committee and its financial and legal advisors. And prior to filing the motion, LBHI was informed that the creditors' committee did not object to the transaction.

Only one objection was interposed. It was filed by Mr. Kuntz. We received an e-mail last night indicating that Mr. Kuntz would not be attending the hearing this morning. And I don't see him in the courtroom as we stand here now.

At this time, LBHI would request that the Court overrule the objection and enter and grant the motion -- enter an order granting the motion.

THE COURT: I'm prepared to do that. I'd like to hear from the creditors' committee simply as to the oversight functions that were exercised in the business judgment of any subcommittee of the committee that may have been involved in reviewing this transaction.

MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank, Tweed, Hadley & McCloy, on behalf of the official committee of unsecured creditors. Your Honor, the private equity subcommittee of the committee did evaluate this transaction and spent a couple of months, actually, looking at it and concluded for many of the reasons as Mr. Fail alluded to, primarily the avoidance, the elimination of the unfunded commitment here. And the committee's advisors' views of the opportunities in the relevant market that this sale represent the best available option at this time. And the committee has no objection to its approval.

THE COURT: Fine. Based upon my review of the motion and the declaration of Christopher Mosher in support of the motion, I'm satisfied that this is the best available transaction in respect of this investment at this time. And I'm prepared to approve it and overrule Mr. Kuntz' objection which is not being prosecuted today.

MR. FAIL: Thank you very much, Your Honor. The next item on the agenda is the motion of Lehman Brothers Holdings Inc. and Lehman Commercial Paper Inc. for approval of a settlement agreement with Silver Lake Credit Fund, L.P. and Silver Lake Financial Associates, L.P.

Your Honor, with the Court's permission, I'd like to offer as a proffer testimony that would be given by Christopher Mosher, a managing director in LAMCO LLC's Private Equity and Principal Investments Group. As I mentioned in connection with the previous motion, Mr. Mosher is in the courtroom today. Thank you, Your Honor.

If Mr. Mosher were called to testify, his direct testimony would be as follows:

Mr. Mosher would testify that as a managing director for LAMCO, he's responsible for advising LBHI on its private equity and principal investments assets including Silver Lake Credit Fund pursuant to the asset management agreement between LBHI and LAMCO.

Specifically, and among his other responsibilities, he is senior responsibility within the private equity and principal investments group for general and limited partnership interest and third party private equity and hedge funds and certain direct principal investments. Prior to the formation of LAMCO, he was the managing director of LBHI and part of LBHI's private equity and principal investments groups with the

same responsibility he now has for LAMCO.

Prior to the commencement of LBHI's Chapter 11 case, he was a managing director of Lehman Brothers Inc. and global head of corporate development with responsibility for leading strategic acquisitions. Prior to that, he was a vice president in the investment banking division of Goldman Sachs & Co. focusing on financial institutions. He's familiar with the activities of the private equity and principal investment groups including the various types of assets, disposition agreement entered into by LBHI as it winds up its estate.

Mr. Mosher would testify that prior to the commencement date, LBHI's businesses included numerous investments in hedge funds located in the United States and internationally. In 2008, LBHI acquired a limited partnership interest in the Silver Lake Credit Fund, a credit-focused hedge fund by making five capital contributions totaling one hundred million dollars.

Mr. Mosher would testify that LBHI's investment in the Silver Lake Credit Fund was subject to a two-year lockup period that expired with respect to the first capital contribution in January of 2010.

Mr. Mosher would further testify that in the months leading up to the expiration of the lockup period, LBHI reviewed its options with respect to its investment in the Silver Lake Credit Fund and, consistent with his general

investment strategy, determined to withdraw from the fund as soon as the lockup period expired. This decision was primarily based on three factors: LBHI's general desire to limit its exposure to market fluctuations; LBHI's belief that within the time frame of these Chapter 11 cases, monetizing the interest in Silver Lake Credit Fund in the near term is the prudent course of action. And given the fact that LBHI is one of the significant investors in the fund, the withdrawal of another significant investor could divert much of the fund's available cash and limit withdrawal options in the future. LBHI thus delivered a redemption notice to Silver Lake in March of 2010. It informed Silver Lake of LBHI's intent to withdraw one hundred percent of the balance of the fund.

Mr. Mosher would testify that Silver Lake filed a number of proofs of claim in LBHI's chapter case. And he would testify that following the receipt of the redemption notice, Silver Lake advised LBHI that it intended to recoup amounts related to its claims against amounts that are due to LBHI from its investment.

Silver Lake further informed LBHI that it intended to enforce provisions of its limited partnership agreement that restrict or limit all limited partners' withdrawal of the interest in the funds. These provisions include a provision that gives Silver Lake a discretion to limit the aggregate withdrawals made by all limited partners in a particular

semiannual period; a provision that gives Silver Lake discretion to spend or limit withdrawals and defer payments of distributions or withdrawals; and provisions that provide distributions that may be made in kind including illiquid securities.

Mr. Mosher would testify that LBHI disputes the amount and validity of Silver Lake's claims and the enforceability of restrictions contained in the partnership agreement but that in order to avoid delay on certainty and expense of litigation, LBHI agreed to the settlement agreement with Silver Lake. The material terms of the settlement agreement are as follows:

Unless Silver Lake elects to enter into an alternative transaction, 92.5 percent of the amount that would otherwise be payable to LBHI in connection with its withdrawal shall be paid to LBHI in three installments. In lieu of the foregoing, Silver Lake may, in its discretion cause LBHI to sell all or a designated portion of its interest in Silver Lake pursuant to an assignment and assumption agreement that was also filed in connection with the motion.

The purchase price for such an alternative transaction shall not be less than 92.5 percent of the value in the investment. Silver Lake agrees to waive and release any and all rights to recoup amounts owed by LBHI on account of its claims. In addition, claim 15157 shall be deemed withdrawn with prejudice.

Mr. Mosher would testify that LBHI's decision to enter into this settlement agreement is well-informed and represents a reasonable exercise of LBHI's business judgment. LBHI has considered the cost and benefits associated with litigation and believes that the settlement agreement is reasonable and appropriate.

And that would conclude Mr. Mosher's direct testimony, Your Honor.

THE COURT: Is there any objection to my receipt of Mr. Fail's rendition of Mr. Mosher's testimony as a proffer? There's no objection. I accept the proffer as evidence in support of the motion.

MR. FAIL: Thank you, Your Honor. We received only one objection to the motion, again by Mr. Kuntz. I do not believe that the objection was filed on the docket but I do believe that we submitted a copy to Your Honor in connection with the hearing binder in advance of the hearing.

THE COURT: I don't believe that Mr. Kuntz is here to prosecute that objection. Is there anyone in person or on the telephone representing Mr. Kuntz's interests? I hear nothing. So his objection is not being prosecuted today.

MR. FAIL: Thank you, Your Honor. At this time, unless you have any further questions, the debtors request that the Court overrule the objection and grant the motion.

THE COURT: I do have one question which really goes

to the heart of the agreement itself. And it may be that someone from Silver Lake needs to comment on this. I don't understand under what circumstances the alternative transaction structure is implemented and what, if any, impact that has on the debtors. I understand the 92.5 percent floor. But I'm not sure I understand why this has been structured in so complex a manner.

MR. FAIL: I'll see if anyone is here for Silver Lake today.

THE COURT: Is anyone here from Silver Lake? Apparently, they didn't think this was important enough to send anybody.

MR. FAIL: I don't know if that's the case, Your Honor. There is no one here in the courtroom today. From the debtors' perspective, it's neutral to the debtors. The 92.5 percent is the floor that the debtors could receive -- it is the amount that the debtors will receive if the installments are paid. And if Silver Lake finds a new investor that would like to take over and perhaps do ongoing business with the fund, it would sell the interest.

THE COURT: Is this purely neutral from the perspective of the estate in that the 92.5 percent is paid in the same manner and in the same time sequence or is there anything negative associated with the exercise of an alternative transaction?

MR. FAIL: If you give me one moment, Your Honor, I'll confer with my clients. I believe that it is neutral or it could be positive.

THE COURT: All right.

(Pause)

MR. FAIL: Your Honor, my previous statement is correct. It is neutral to the debtors. It may be positive in the fact that the debtors may receive cash sooner if the investment is sold to a third party. And an additional reason that Silver Lake may elect to do the alternative transaction is that it cannot obtain liquidity from its own assets but seeks to have a third party provide that liquidity.

THE COURT: Okay. And the same question that I asked in connection with the earlier matter of the committee. I'd be interested in the committee's evaluation of this transaction.

MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank Tweed again on behalf of the committee. Just as a preface, Your Honor, the committee has a private equity subcommittee that regularly evaluates proposed transactions with respect to private equity assets. And the committee has been engaged for some time and continues to be engaged in the process of determining when it's appropriate to sell and when it's appropriate to hold. And there have not been many sales of private equity assets to date in this case. And it's an ongoing discussion amongst us and the debtors as to when it's

appropriate and when it's not appropriate. In this case, like the one before, we believe that the proposed transaction here makes sense for all the reasons articulated by Mr. Fail, in particular, the waiving of the claims on top of the sale of the asset here. We think the combination provides a good value for the debtors. And the alternative transaction, we also agree, is neutral to the debtors and no manner which way it turns out should be in the debtors' best interest.

THE COURT: Okay. Thank you for that. This motion to approve the transaction with Silver Lake is approved.

MR. FAIL: Thank you very much, Your Honor. The next item on the agenda will be handled by Mr. Perez.

MR. PEREZ: Good morning, Your Honor, Alfredo Perez. The fourth matter on the agenda is the motion to authorize to transfer of certain mortgaging servicing rights from LBHI to Aurora. This is a matter, Your Honor, that we have been -- that I've been before the Court on many, many times.

In essence, Your Honor, when I was last here, I believe in January, the debtor was in the process of negotiating an overall settlement. In fact, we continued to try to negotiate that overall settlement. I do have a proffer from Mr. Lambert who will advise the Court as to the status of that and what's happened in the last seven months since that time.

But in essence, this particular motion is kind of what

I would call the first step or an initial step with respect to the overall settlement. The plan and disclosure statement that we filed and is currently on file anticipates that the overall settlement would be done and discounts the economics on the basis of that. So I think everybody's well aware of the steps that we would take assuming we achieve regulatory approval. So the dollar amounts have already been taken into account in the recoveries.

So, in essence, the debtor -- LBHI has servicing rights, but not the underlying loans, for approximately 117, 120,000 Fannie Mae loans. As part of the settlement, those loans would all be transferred to Aurora. There is a population of those loans which, in the motion that we filed, we thought it was about 40,000. It's actually a little bit less; it's about 37,000 -- that are what we call distressed loans. And those loans will, in fact, be transferred to Aurora without having to make any of the seller representations which we obviously wouldn't be able to do. We'd have to sell as is. And then Aurora, in turn, is going to transfer those to Fannie Mae and receive a payment for those. Had we had the -- had we had the ability to make the seller reps, the value of the -- the appraised value of those servicing rights are about between forty and forty-four million dollars. Fannie Mae is going to be paying Aurora approximately twenty-five and a half million. And in the motion, we put twenty-six but since the population

has come down, it's about 25.3 million to 25.5 million depending on the exact number.

So that's, in essence, an additional funding for the bank. The bank is currently well capitalized. But this is part of one of the steps that would be taken in connection with the overall settlement.

And with the Court's permission, I'd like to -- a brief proffer from Mr. Lambert on the issue. We did receive one objection from Mr. Kuntz. Additionally, Your Honor, we received a reservation of rights from Fannie Mae. We spoke to them. They withdrew that. We made it clear -- we filed an amended motion to make clear that the claims that they've asserted in the LBHI bankruptcy are not in any way, shape or form touched or impacted by this motion. And I think it was a clarification. It was never -- there was no intent to do anything with Fannie Mae's proof of claim on file. Obviously, that's going to be resolved in the context of the overall settlement. So this didn't attempt to do that. We just made that clear. Winston & Strawn, who represents Fannie Mae, could not attend this morning and they said that we had permission to indicate to the Court that they were in favor of entering into this -- approval of this motion.

THE COURT: Just as a point of clarification, you said will be resolved in the context of the overall settlement. What settlement are you referring to?

MR. PEREZ: The overall settlement with Aurora and the OTS, the settlement that we've been waiting for since --

THE COURT: The settlement that has been alluded to but not yet described in any detail.

MR. PEREZ: Correct, Your Honor.

THE COURT: Okay.

MR. PEREZ: Yes. So with the Court's permission, I'd like to proffer the testimony.

THE COURT: Yes, please.

MR. PEREZ: Okay.

THE COURT: Go ahead.

MR. PEREZ: Your Honor, if called to testify, Mr. Lambert, who is in court today at the very back, would testify that he has more than twenty years of experience in connection with financial and operational restructuring; that he is a managing director of Alvarez & Marsal and has been assigned to the Lehman matter since October 1, 2008; and that his areas of responsibility include managing the combined bankbook, the bank platforms for LBHI which include both Aurora Bank, FSB and Woodlands Commercial Bank.

Mr. Lambert has been intimately involved in the affairs of the banks since October 1st, 2008. And since that time, he has independently reviewed and been advised by the bank's business and its operations, records, financial statements and other data in connection with his communications

with the bank's management, the creditors' committee as well as respective counsel and professionals for both the bank and the estate.

And in addition, Mr. Lambert would testify that he, from time to time, has been in contact with the bank -- with the bank's regulators to discuss the issues surrounding the overall resolution of the claims asserted against LBHI by the bank.

Mr. Lambert is the primary representative on behalf of the debtors in connection with all matters relating to the bank and this motion, in particular.

Mr. Lambert would testify that based on an independent review of the bank's affairs by LBHI and its professionals, LBHI believes that the bank is a valuable asset of the estate and needs to preserve that value for the benefit of its creditors. In its most recent financial report, dated March 31, the bank's book equity is in excess of 640 million dollars.

Mr. Lambert would further testify that, as the Court is aware, the bank is subject to authority of both the Office of Thrift Supervision and the FDIC and that in response to diminished capital levels reported on the December 31, 2008 Thrift financial report, in February of 2009, the OTS issued a prompt corrective action directing the bank to impose significant restrictions on its operations including, among other things, the inability to issue certificates of deposits,

issuing new loans and conducting certain areas of business without the OTS' approval.

In response to those concerns caused by the prompt corrective action, including the potential seizure of the bank, LBHI has taken a series of steps to support the bank and preserve the opportunity to recover significant value therein.

And, Your Honor, just as an aside, in our pleading, there's a footnote which details all of the actions that we have taken in order to support the bank since the beginning of the case.

Mr. Lambert would further testify that after very prolonged and extensive negotiations with the bank that were overseen by the group of independent directors at the bank and extensive discussions with the OTS, LBHI has negotiated a comprehensive settlement with the bank. The settle -- this proposed settlement will settle the bank's claims asserted in the master forward agreement between the bank and LBHI which is related, in addition, to the 365(o) claim which are currently stated in the amount of 2.1 billion dollars. And it will also virtually settle all other open claims between the bank and LBHI.

When the settlement is implemented, it will significantly increase the bank's capital. It will substantially lessen the regulatory restrictions on the bank's operations. The settlement will also allow the bank to

continue to originate high quality residential mortgage loans and to enter into new business lines and possibly access the market for brokered certificates of deposits.

The settlement has been submitted to the OTS for approval and has been under review for the past several months. The regulators have provided comments to the party (sic) regarding the settlement and the parties have incorporated those modifications into the settlement. Formal approval has not yet been issued. The delay -- and Mr. Lambert would testify that delay is unfortunate as it has kept the bank in a position of operating under the prompt corrective action notwithstanding that the bank has now been "well capitalized", as that term is defined, in the regulations for over six months and is capable of conducting new business.

While the banks have been reviewing the settlement, LBHI and the banks have been focused, their attention on ensuring that delay does not impair or erode the value to LBHI estates. LBHI -- Mr. Lambert would testify that LBHI is becoming increasingly concerned that members of the bank's management team could terminate their employment with the bank because the PCA has prevented the bank from, for instance, paying bonuses to such employees that are standard in the bank's industry and that were due to be paid at the beginning of the year. Upon approval and consummation of the settlement, the immediate risk of the appointment of a receiver for the

bank and any assertion of a claim under 365(o) will be eliminated.

Now, with respect to the motion at hand, Mr. Lambert would testify that LBHI is the owner of certain mortgage servicing rights with respect to a portfolio of Fannie Mae loans. Aurora Loan Services is the subservicer of those rights. The entire portfolio of the Fannie Mae servicing rights totals approximately 114,000 loans with a principal balance of 21.7 million. They are all being currently serviced by Aurora. LBHI is not the lender and does not otherwise own the underlying loans. Rather, LBHI was the seller of the mortgage loan and owns the rights to service the loans. LBHI's mortgage servicing rights for the entire Fannie Mae portfolio, assuming that they were able to give the seller reps, were valued at approximately 154 million in May of 2009.

As part of the overall settlement, LBHI would transfer all of the mortgage servicing rights of Fannie Mae to Aurora. By this motion, LBHI seeks to contribute to the bank in advance of the settlement a portion of the portfolio mortgage servicing rights, whether it's the so-called "high risk" portfolio. This portfolio totals approximately 37,000 loans with a principal balance of between 8.2 and 8.3 billion dollars. Again, Mr. Lambert would testify that LBHI does not own the loans but only the servicing rights and that they were recently -- those servicing rights were recently appraised assuming that LBHI

could give the seller reps for approximately forty-four billion (sic) dollars.

Fannie Mae has --

THE COURT: You must mean million.

MR. PEREZ: Forty-four million. Sorry.

Fannie Mae has requested that LBHI transfer the designated amounts to the bank on or before August 1st and that the bank will, in turn, transfer the designated servicing rights to Fannie Mae as part of the transaction that Fannie Mae is developing as to concentrate the servicing of high risk loans.

In exchange, Fannie Mae has proposed to approve LBHI's transfer without the assumption of the seller obligations or seller reps and has agreed -- the bank has agreed to the terms of the settlement -- will not be changed by the reason of LBHI's transfer of the designated service rights to the bank after completion of the settlement. In addition, Fannie Mae will get approximately between 24.4 and 28 -- 24.8 million dollars for the servicing rights.

In addition to the immediate benefits from the transaction, Fannie Mae has indicated that it will consent to the transfer of all of LBHI's mortgage servicing rights for Fannie Mae-sponsored loans to the bank as contemplated in the overall settlement and will consent to such transfer without the assumption of the seller obligation.

In response to the motion, Fannie Mae filed a reservation of rights. That reservation of rights has now been withdrawn.

As it relates to the business judgment, Mr. Lambert would testify that LBHI's decision to immediately transfer the rights is based on an exercise of the debtors' business judgment. LBHI is receiving significant benefits as a result of further capitalizing the bank even if it's prior to the overall settlement with the bank. The bank will receive between 24.8 and -- 24.4 and 24.8 million dollars. And LBHI will not have to make the seller reps and warranties and the designated servicing rights will not be subject to the seller obligations.

Mr. Lambert believes that the transfer of the designated rights are in the best interest of the estate's and its creditors and that these transfers have been long contemplated as a strategy to recover the value of the banks and that, as a result of this, the bank's invest -- LBHI's investment in the bank will be maximized.

That concludes this proffer, Your Honor.

THE COURT: Is there any objection to that proffer? I hear no objection. I accept the proffer. Mr. Kuntz is not here as the only current objector. But this is an important transaction and I have a couple of questions of my own. One is, I am concerned about the twenty million dollar difference

between the appraised value of the mortgage servicing rights at forty-four million dollars and the approximate amount to be realized here of twenty-four million dollars. And I'm interested in Mr. Lambert's business judgment that that represents fair value for the assets being transferred. Alternatively, I'd be interested in also hearing from counsel for the committee after Mr. Lambert has had a chance to make his way to the front of the room

MR. PEREZ: Your Honor, just -- the only footnote is, the forty-four million included the reps and warranties.

THE COURT: I understand that but, in effect, what we're talking about is, is it really twenty million dollars worth of reps that we just gave up.

MR. LAMBERT: Good morning, Your Honor. Doug Lambert with Alvarez & Marsal for the debtor.

THE COURT: Good morning.

MR. LAMBERT: Yes, Your Honor, this has been a fairly complicated transaction as Mr. Perez had read my proffer. This is sort of the culmination of over nine months of negotiations with Fannie Mae. The value of the mortgage servicing rights, as indicated, first of all, that valuation was last done several months ago. So a portion of the difference would be just attributable to timing. We do not do on a monthly basis these valuations because they're time consuming and costly, but, generally, they proceed in a downward decline.

As Mr. Perez had indicated, the valuation which we had obtained for those mortgage servicing rights presupposed that those rights would be transferred to a purchaser free and clear of seller reps and warranties. By virtue of this transaction that we're seeking Court approval today to enter into, we will be transferring the remaining mortgage servicing rights owned and held by LBHI to the bank. The bank will not be obligated to step into LBHI's shoes or the seller reps and warranties which we believe if there was a dollar value associated with assumption of those seller reps and warranties would far exceed the discount that's indicated through the subsequent sale from the bank to another mortgage servicer designated by Fannie Mae.

So, sort of a long way of trying to answer your question to give you some background and context.

THE COURT: Just so I understand this, is this, in fact, a benefit to Aurora to receive these without seller reps so if any --

MR. LAMBERT: I would argue, certainly, it is both a benefit to LBHI as well as to the bank.

THE COURT: A benefit because LBHI would not be able to give the reps?

MR. LAMBERT: Correct --

THE COURT: Okay.

MR. LAMBERT: -- without stepping into a -- I guess, a administrative undertaking.

THE COURT: All right. And then without meaning to put you not the spot, there have been some references to this transaction as being part of a broader settlement with the Office of Thrift Supervision that would lead to the removal of the limitations upon the current operations of Aurora Bank. What's the timing as far as you can estimate?

MR. LAMBERT: Your Honor, as I think we were last in court in December when we last sought to make a contribution, which was, in fact, at that time, a hundred million capital contribution in the form of cash to Aurora Bank, we had put forth a settlement, a global settlement, not only for Aurora Bank but also Woodlands Commercial Bank, the other banking institution owned by the estate. We believed at that time we had submitted to the regulators a comprehensive global settlement, one, and which was fair to all parties, took into consideration all matters and facts of law as well as economics to ensure that both institutions would remain financially sound. We still believe that that settlement accomplishes those goals. There has been virtually no deviation from the terms proposed back in December. And we have continued to wait as Mr. Perez has indicated for the past seven months for a definitive acceptance. The proposal has not been rejected. And as of latest last night, speaking with regulatory counsel for both institutions, we believe that the acceptance by not only OTS but the FDIC and the Federal Reserve is, in fact,

imminent.

I can't give you a definitive answer but I am hoping within the next week or two following perhaps passage of the Dodd-Frank bill that we would receive a definitive answer and hopefully acceptance --

THE COURT: Is there any --

MR. LAMBERT: -- of the settlement.

THE COURT: -- incremental risk here as a result of the regulatory overhaul legislation that's currently pending in Congress?

MR. LAMBERT: Specifically, as it relates to this transaction and the institutions? None that I am aware of. But as Your Honor I'm sure is aware, the legislation is, whatever, twenty-three or a hundred pages or so leaving, I think, open regulations that still need to be drafted and constructed by the various regulators. But there's nothing to my knowledge today, as I stand here before the Court, that would lead me to either change my recommendation to move forward with the proposed settlements that have been with the regulators these past seven months.

THE COURT: And would you be proposing the current settlement relating to the mortgage servicing rights transfer if it were not instrumental in developing an overall resolution of the problems with the bank?

MR. LAMBERT: Again, Your Honor, separate and apart

from the settlement, though these, as Mr. Perez indicated, were an interval (sic) part of the overall settlement, we believe that those mortgage servicing rights retained the most value on behalf of the estate in the hands of the bank which is actually the subservicer providing servicing under those servicing rights.

So, regardless of the settlement, I believe that maximizing value, ultimate value to the estate would be to have those servicing rights transferred into Aurora which I think will be able to derive the most value, if that answers your question.

THE COURT: It does. And I'd simply like to note that, Mr. Lambert, you've been giving the functional equivalent of testimony. But I haven't asked you to come to the witness stand and I haven't sworn you. And I don't treat this as testimony as much as representations that you're making in response to my questions. And I'm treating it with the formality that would otherwise apply if you were sworn as a witness.

MR. LAMBERT: Understood, Your Honor.

THE COURT: Thank you very much.

MR. LAMBERT: My testimony wouldn't --

THE COURT: I'm confident that --

MR. LAMBERT: -- or my responses wouldn't change.

THE COURT: I'm confident that -- I'm confident that

in front of this large a crowd, you would not be saying anything other than truth.

MR. LAMBERT: Thank you, Your Honor.

THE COURT: All right. I'd like to hear from the creditors' committee on this.

MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank Tweed, on behalf of the committee again. Generally, Your Honor, as you know, we've been involved with the Aurora and Woodland situation for the better part of the last two years. We've supported the debtors in the past with respect to the investments that were made to keep the bank going and to promote an ultimate resolution. And we believe, like the debtors have represented, that ultimate approval of a global settlement is imminent. Anything's possible with the regulators in Washington, but we do believe that it's highly likely to reach fruition in the near future.

And we believe that this motion is part and parcel. I think, as Mr. Lambert just represented as well, we believe that even without the settlement, these mortgage servicing rights have greater value in the hands of Aurora because of the rep and warranties situation than anywhere else. So that even without the settlement, we would probably be inclined to support this motion. But given that it's part of the overall settlement would happen anyhow under the settlement which we believe will go forward and will happen, by virtue of the

motion, in a more favorable way for the debtors, given the waiver of the reps and warranties with respect to these mortgages, the overall waiver of the reps and warranties with respect to all the other mortgage servicing rights and the approval of Aurora for seller and servicing purposes, the overall package is -- represents a good deal for the debtors both in the context of this individual motion -- this motion by itself and with respect to the settlement which we hope is actually before the Court sometime in the relatively near future.

THE COURT: All right. Thank you. Anything more?

MR. PEREZ: No, Your Honor. We have nothing further. We'd request that the Court grant the motion.

THE COURT: All right. We spent a lot of time on what is fundamentally an uncontested motion but it's an important matter. I'm satisfied based upon the proffer that has been made of Mr. Lambert's testimony and also Mr. Lambert's candid responses to some of my questions that this is a transaction which is in the best interest of the estate and may be instrumental in helping to bring about an overall settlement of issues relating to the viability of Aurora Bank, an important asset of the estate.

I'm also satisfied that the creditors' committee has examined the transaction and supports the transaction. The motion is approved.

MR. PEREZ: Thank you, Your Honor. Your Honor, the next matter on the agenda is the motion of the SunCal Master debtors for relief from the automatic stay.

MR. MANKOVETSKIY: Good morning, Your Honor. Boris Mankovetskiy, Sills Cummis & Gross, on behalf of Al Siegel, the Chapter 11 trustee of certain SunCal debtors in cases pending in the Central District of California. With Your Honor's permission, I'd like to introduce to the Court Mr. Robert Marticello of the Weiland Golden firm who's the lead counsel on this matter and he will argue the motion. Mr. Marticello's pro hac papers have been submitted to Your Honor and the order is pending, I presume. But we would ask your permission to allow Mr. Marticello to speak.

THE COURT: The pro hac vice admission will be deemed granted --

MR. MANKOVETSKIY: Thank you, Your Honor.

THE COURT: -- nunc pro tunc to the first words spoken.

MR. MARTICELLO: Good morning, Your Honor. Robert Marticello of Weiland Golden on behalf of Al Siegel, the Chapter 11 trustee for the SunCal debtors. Thank you for allowing me to address the Court today.

The trustee's requesting relief from the automatic stay is necessary to fulfill his statutory duties, administer the assets of the SunCal Master estates and to resolve any

claims and liens that relate to those assets. We think the Sonnex factors overwhelmingly support granting the motion.

THE COURT: Can I just break in for one second? I don't mean to interrupt the flow of your argument with respect to the Sonnex factors but I'm sure you're aware that I have recently dealt with some other issues relating to the SunCal parties. And I just want to clarify whether or not you represent the same trustee or a different trustee that was reported to have been withdrawing certain motions that I heard a few months ago. I'm not sure how many trustees are involved in the SunCal bankruptcy cases in California.

MR. MARTICELLO: The tru -- Mr. Siegel is the trustee in four cases. He is not the trustee in the cases that were referred to as the "affiliated SunCal matters". Those are entirely different cases.

THE COURT: Okay. There's a trustee who's represented by William Lobel?

MR. MARTICELLO: Correct. Correct.

THE COURT: And that's a different person altogether?

MR. MARTICELLO: That's correct.

THE COURT: Okay. I'm just trying to understand the players.

MR. MARTICELLO: No, I understand. As I was saying, I believe the Sonnex factors overwhelmingly support the motion. But I'd like to focus on what I think are typically the most

significant factors which are judicial economy and a balance of the harms.

The trustee absolutely needs stay relief to administer the assets of the SunCal Master estates, to move those cases forward. The parties attempted settlement discussions for over a year but unfortunately were unable to reach an agreement. And the trustee has no alternative but to pursue other alternatives in those cases. And, in fact, LCPI has criticized the trustee for not moving forward sooner.

In administering the SunCal estates, the parties are going to have to deal with the validity of the liens and the issues related to LCPI's claims. So it's inevitable. And the California court is the most appropriate forum to deal with these issues. California court has exclusive jurisdiction over the properties. It's the only Court that can order the sale, consider the sale motion relief and because it's the only Court that can order the sale of the properties, it's going to have to deal with the issues related to the validity of LCPI's liens. To deny the motion to require that the trustee pursue claims in this forum would create a situation where we have a potential for inconsistent rulings and duplicitous litigation because we're going to have to deal with these issues in both forums. Again, a sale motion to deny credit bid rights or sale free and clear, the issue is going to be the disputes as to LCPI's liens as to validity and priority.

So when the goal of bankruptcy is to have one forum that adjudicates all of the issues, there's only one court here that can do that and that's California.

THE COURT: Well, there's an argument that this is the Court that can do it as well since the trustee, I believe, filed proofs of claim here.

MR. MARTICELLO: That's correct. And --

THE COURT: So the argument cuts both ways. It's either here or there.

MR. MARTICELLO: I don't think it does because this Court cannot adjudicate the property, cannot order the sale of the property. Again, the California court will decide these issues to some extent.

THE COURT: But I can determine whether or not you have a valid claim against the Lehman estate. And that claim is based upon, I think, the complaint that you're preparing to file if you get stay relief in California.

MR. MARTICELLO: Correct. To the extent that this Court has jurisdiction to adjudicate an avoidance action claim or the action to -- or the claim to equitably subordinate LCPI's lien and claim, this Court could do so. But again, I think when you have a situation that the California court's going to have to deal with these issues and this Court will only do so if we pursue that claim in this forum, it makes sense that you do everything in one forum.

THE COURT: I understand the argument. What I don't understand is the timing. Why are you here now?

MR. MARTICELLO: The reason we're here now is, again, we spent a year -- over a year negotiating with LCPI. And unfortunately, it fell apart. So once LCPI terminated the term sheet, which was at the end of March --

THE COURT: You're saying it fell apart as if there was some force of nature as opposed to human beings.

MR. MARTICELLO: No. It was, again, as stated in the brief, Fidelity, the title insurance company, objected to the compromise and that objection raised what ended up being an ambiguous term in the term sheet. And the parties materially disagreed as to the interpretation of the term sheet. And the trustee could have went forward with that term sheet. But it was our -- it was the trustee's --

THE COURT: You're saying the trustee could have moved forward with that term sheet?

MR. MARTICELLO: Well, if he accepted LCPI's interpretation. But it was the trustee's belief that LCPI's interpretation was contrary to the parties' intent and would have resulted in zero dollars to the unsecured creditors of those estates. We could --

THE COURT: Have you abandoned efforts to try to resolve these disagreements? Because looking at the exhibits attached to Mr. Steinberg's declaration, it appears that there

was a remarkably detailed settlement agreement with everything that conceivably could have been covered, covered. And then there's a problem and instead of solving the problem, you're here to start litigation.

MR. MARTICELLO: We attempted to solve the problem.

THE COURT: How?

MR. MARTICELLO: There were -- as stated in LCPI's brief, there was a subsequent proposal. But it was patently unacceptable to the trustee. The parties attempted to negotiate a resolution to resolve the dispute. But they were so far apart that they were unable to do so. And again, it came down to the fact that the trustee did not believe that the term sheet as interpreted by LCPI or even as proposed to be revised would have provided zero value to the unsecured creditors of that estate. The professionals and trustee's fees would have been paid. But there would have been zero value for the unsecured creditors. And so the trustee believed, in the exercise of his fiduciary duties, it wasn't acceptable.

THE COURT: Well, there's an argument that there's no value there for the unsecured creditors anyway because the assets are deeply under water.

MR. MARTICELLO: That's true. But we do believe we have valid claims against LCPI to avoid this lien.

THE COURT: Yeah. But those claims were settled in a settlement agreement nine months ago.

MR. MARTICELLO: But the compromise was never documented and, again, the parties were unable to reach a binding agreement.

THE COURT: To what extent is this litigation an echo of the litigation that the other SunCal debtors intend to pursue in California and the motion for stay relief which was brought here a few months ago? One of my concerns here is that this is a me-too.

MR. MARTICELLO: Your Honor, I'm not that familiar with the --

THE COURT: You're aware that there was litigation brought in this court by the SunCal voluntary debtors seeking stay relief; that the motion for stay relief was denied; that there were issues relating to a transaction with Fenway that prompted that litigation; that there was a motion for a stay pending appeal which was also denied; and that there's an appeal currently pending in the district court all relating to litigation which, as I understand it, is currently pending before the Ninth Circuit relating to whether or not equitable subordination litigation can properly be brought in California without first obtaining stay relief here.

MR. MARTICELLO: I understand --

THE COURT: You're aware of all that?

MR. MARTICELLO: I am aware of all that. I believe that the facts for that particular case are entirely different.

I read the transcript that was attached to the opposition pleading.

We -- the trustee did not pursue an equitable subordination action first. What we did was we marketed the properties -- and this goes back to the question that Your Honor originally posed, was why are we here now. Once the term sheet was terminated, we retained a broker. We marketed the properties. We negotiated with multiple buyers. We've engaged in due diligence. We wanted to bring this case to a point where we could move and move forward once we obtained stay relief from Your Honor.

But as far as the other matters, we've done everything differently than that particular group of SunCal entities. We didn't go forward with the litigation first and then when we lost on appeal come here and say well, please give us stay relief. We're asking this Court to allow us to go forward first.

And I don't think that the Ninth Circuit's decision will moot this motion. Even if the Ninth Circuit reverses the BAP and says that equitable subordination does not violate the automatic stay when it's defensive in relation to a proof of claim, this Court would still have to grant this motion as to the sale motion relief. So even if the Ninth Circuit -- regardless of how the Ninth Circuit decides that particular appeal, this motion will need to be decided.

THE COURT: Do you have a stalking horse bidder contract today?

MR. MARTICELLO: Yes, we do. And I believe it was filed last night. And we sent a copy to your chambers this morning.

THE COURT: I haven't seen it.

MR. MARTICELLO: I know it's very short notice. And I believe we have another copy here.

MR. MANKOVETSKIY: We have a copy, Your Honor. But indeed it was filed last night.

THE COURT: I just want to know what that contract provides.

MR. MANKOVETSKIY: Your Honor, actually, I was en route and have not -- may I approach, Your Honor?

THE COURT: Has a copy been provided to other counsel?

MR. MANKOVETSKIY: I have extra copies for them, too.

THE COURT: Yes --

MR. MANKOVETSKIY: They may have one but --

(Pause)

THE COURT: Okay. You don't need to go into it now. I was just wondering if you had it.

MR. MARTICELLO: We do, Your Honor. And in a nutshell, it's a sale free and clear of forty million dollars in cash. We are currently in escrow. And that really goes to -- when you consider the balance of the harms, this is one

of the biggest harms that the trustee has put in significant time and energy into obtaining a offer to sell the properties. And if this Court denies the motion -- the buyers would walk. There's no question about that. If the trustee cannot obtain approval of an asset purchase agreement, there's no buyer out there that's going to sign one.

THE COURT: But as I understand the original settlement that you had with Lehman, the property was to be sold under and pursuant to a plan of reorganization not as part of a -- an intermediate 363 sale which is a bridge to litigation over the proceeds. This is a very different kind of arrangement. I'm frankly baffled by the trustee's business judgment. I'd like you to explain it.

MR. MARTICELLO: Well, again -- well, first, the California bankruptcy court will decide all these issues. I mean, if the sale proves not --

THE COURT: But you're here right now and I'm asking you a direct question --

MR. MARTICELLO: I understand.

THE COURT: -- about your client's business judgment. What is the business judgment that says this is the right time to sell this property and that it will maximize value?

MR. MARTICELLO: We've spent a significant time marketing the properties. These are the highest offers that we've gotten to date. It's an all cash forty million dollar

offer. There are overbidders. There will be continuous -- there will be other marketing efforts prior to the sale and an overbid proceeding. And, Your Honor, these properties together, are 5,000 acres -- over 5,000 acres. There's continuing issues with these properties. The longer we hold them, the more issues arise with health and safety, making sure there's no vandalism, complying with municipal regulations. And there are numerous disputes with LCPI over use of cash collateral. So there's a lot of cost in just holding these properties. So the trustee has to do something. And --

THE COURT: Yes. But you're also proposing depriving Lehman of its credit bid rights. That's going to be very hotly litigated. And you're likely to create more administrative expense than you're going to avoid. I don't understand why you want to do this.

MR. MARTICELLO: One, it's a matter of what the options are to the trustee. And again, we think that we can deny LCPI's credit bid rights because its claims are a bona fide dispute and its liens are a bona fide dispute. If we're wrong, the motion will be denied. But LCPI will have a chance to defend that and the California bankruptcy court will consider it. But if we're right, we'll generate significant unencumbered cash that he can distribute to the unsecured creditors.

THE COURT: So this is just another example of bi-

coastal litigation in order to gain litigation advantage.

MR. MARTICELLO: I don't think so. We're not trying to gain litigation advantage. We're trying to be on --

THE COURT: Of course you are. Of course you are. You're here seeking the ability to do something adverse to the Lehman estate in a foreign bankruptcy court in order to advance the interest of unsecured creditors in that case and, in effect, abandoning a fully documented settlement agreement by saying there are issues you can't resolve. It's a tactical move. It's pretty clear to me. Are you telling me it's not?

MR. MARTICELLO: Well, yes, we are attempting to get stay relief to do what Your Honor just said. The settlement agreement fell apart because the parties could not reach an agreement.

THE COURT: It fell apart because you chose not to pursue resolution of the disputes.

MR. MARTICELLO: I mean -- we attempted to settle. It didn't work. The parties were not able to reach an agreement. But we spent over a year trying to do that.

THE COURT: Not according to the papers I've read. You spent some time and then abandoned.

MR. MARTICELLO: Well, the initial settlement negotiations took over a year. And then when the disagreement arose, I'm not sure -- Mr. Reiss may be a better party to address that issue 'cause he was actually involved in the

discussions.

THE COURT: So you invest a year in a settlement, have a problem relating to some mechanics' lien claims and then decide to abandon that very carefully crafted settlement and instead pursue scorched-earth litigation. That's what I'm hearing.

MR. MARTICELLO: It wasn't a minor issue, Your Honor. That's all I can say about the disagreement. It was a substantial issue. I mean, the trustee can't go forward and ask for a --

THE COURT: I don't need to get into the merits of the negotiation that relates to a bankruptcy case which is not in front of me. The only thing that's in front of me is your request for stay relief. And let's go into the Sonnex factors in light of all this colloquy.

MR. MARTICELLO: Okay. To go back to what I was saying. When we're looking for one Court to adjudicate the issues, the California bankruptcy court's the best position to do that. When you look at the balance of the harms, if the motion is denied, the buyers will walk, will lose the opportunity to sell the properties. The trustee -- the administration of the SunCal Master estates will be paralyzed. We cannot move the cases forward other than seek use of cash collateral to maintain the status quo which LCPI objects to. I mean, so -- that's -- when Your Honor says it's a strategic --

we're looking for a strategic advantage, we're just looking for equal footing because we really can't do anything if this motion is denied because LCPI's liens and claims have to be dealt with. They have to be dealt with.

THE COURT: Why can't you go back to the settlement table, take a look at the document that you spent a year creating and solve the problem? Whether it's big or small, it's clearly solvable.

MR. MARTICELLO: Your Honor, we tried to do that and it just didn't work.

THE COURT: When did you last try to do that? Give me a date.

MR. MARTICELLO: Just one moment, Your Honor. Mr. Reiss was actually involved in the discussions and probably would have a better idea.

MR. REISS: Would Your Honor like me to address the Court on that issue?

THE COURT: I just want to know when last there was an attempt to settle the dispute which is allegedly impossible to settle.

MR. REISS: Your Honor, Daniel Reiss, Levene, Neale, Bender, Rankin & Brill for the official committee of the unsecured creditors in the SunCal cases. There have been discussions as of yesterday and even this morning and late last week. The settlement negotiations -- there were settlement

negotiations subsequent to and prior to and after the withdrawal of the motion under 9019. There was a significant economic issue that the trustee, the committee and the debtor and the committee for Lehman Commercial Paper could not bridge that gap. Because they could not bridge that gap -- and it is a large number -- the trustee then decided to move forward -- move the case forward with respect to a sale for the reasons that Mr. Martina (sic) has said, because it's costly to maintain these properties, because there are also issues potentially of a statute of limitation with regard to certain causes of action.

THE COURT: That's not a big issue. You can always get a toll on the agreement.

MR. REISS: Oh, okay. Grant -- I agree, Your Honor. I think the issue of carrying costs and risks to the Chapter 11 estate of managing over 5,000 acres of property where Lehman Commercial Paper is objecting to the use of cash collateral, there is a point at which the trustee, in its business judgment, needs to move the case forward. The only logical way to do that is to administer the properties.

THE COURT: I hear what you're saying but my question was when last there was an attempt to settle the disputes. And you're telling me it's happened as recently as this morning that you've had conversations, is that right?

MR. REISS: I received an e-mail this morning that I

believe came from the lender group's counsel. There has been a gap. There's been a three or four month gap of really lack of negotiations. But there certainly were negotiations subsequent to the trustee's expression to Lehman Commercial that the settlement wasn't going to work out the way that was intended to create a dividend for general unsecured creditors.

THE COURT: Now do I understand that you have been personally involved in these negotiations?

MR. REISS: Certain aspects of them, Your Honor, yes.

THE COURT: Okay. And is it correct that there have been no serious attempts to resolve the disagreements relating to the documented settlement agreement for the last three or four months until perhaps that e-mail today?

MR. REISS: There was more than just the e-mail today. There was --

THE COURT: Answer --

MR. REISS: -- correspondence late last week.

THE COURT: Answer the first question. Is it correct that there have been no serious attempts to deal with the breakdown in the settlement negotiations for a period of approximately three or four months?

MR. REISS: Yes, Your Honor.

THE COURT: All right. That's really my question. Thank you.

MR. REISS: Thank you, Your Honor. So the --

THE COURT: That's all I want to hear from you.

MR. REISS: Oh. Thank you, Your Honor.

THE COURT: Thank you.

MR. MARTICELLO: So it would have been around March that the parties ceased settlement discussions. And I would submit it's because we're moving forward that LCPI reached out today or last night. If we had done nothing the period of no discussions would have been longer. But it's because we're moving forward that discussions have been renewed. And we're open to discussions. But the point is, the trustee has to pursue other alternatives, has to move these cases forward and has already executed an APA and is doing so.

And just to summarize my point on the harm, Your Honor, if the motion is denied today, the potential buyers will be lost, will be unable to move those cases forward. And without the ability to test the validity of Lehman's liens, move the cases in some other direction, it's really just a matter of time before LCPI gets stay relief. And that would be prejudicial to the creditors because if LCPI is able to obtain stay relief on liens that we have valid claims against and we don't have the opportunity to prove the merits of those claims, that's prejudicial.

THE COURT: Well, what you're really telling me, cutting through your remarks, is that you want the opportunity to take property away from this bankruptcy estate. You want

the ability to pursue litigation claims that will deprive Lehman's creditors of Lehman's asset. Lehman's asset being the 5,000 acres you just described in California. What you're really saying is give me stay relief so I can take action that's detrimental to the interest of the Lehman estate, correct?

MR. MARTICELLO: Correct, but they will have --

THE COURT: How can you possibly prevail if you say correct to that question?

MR. MARTICELLO: Because the harm -- because they will have an opportunity to vet everything we're going to do in California. But granting the motion, they have failed to identify any harm. They said it's going to be costly. It's going to interfere with our case. Vague assertions. They've already demonstrated they have the ability to participate actively in both cases -- are going to do so regardless of what happens today. The cost? As I said, the litigation's inevitable. It's not going to get less costly. It's going to be more costly because there's holding costs. And again, every time we file a cash collateral motion, there's a dispute. These disputes need to be resolved. The most efficient economical way to do that is to grant the motion and let us go forward.

THE COURT: Isn't the most economical and efficient way to go back to the table and solve the problem whether it's

big or small and use the structure that you've already invested a year in developing in order to develop a plan of reorganization that's consensual with Lehman and it gets something for creditors? Isn't that the most efficient thing for you to do?

MR. MARTICELLO: It would be if it was possible. But the parties -- this isn't a case -- I think, like the other SunCal case, where no discussions have taken place. The parties spent a significant amount of time trying to settle these disputes. We tried to do that first. It didn't work. This is the trustee's alternative. And I don't think it's prejudicial to the Lehman estate because they're going to get what they're entitled to. If the Lehman has valid liens, we'll lose. But we should have the opportunity to prove our claims. And again, they've identified no specific harm if this motion is granted. And we've identified several if it's denied.

THE COURT: All right. I think I should hear from other counsel. And looking at how crowded the courtroom is today, we have a standing room only crowd of lawyers who are all charging their clients to listen to you argue this issue.

MR. MARTICELLO: I understand, Your Honor.

THE COURT: So I think that there is, even in presenting the motion, an administrative burden to the Lehman estate. But that's just an observation about the number of people observing this.

MR. MARTICELLO: I understand, Your Honor.

THE COURT: Okay.

MR. MARTICELLO: Thank you.

MR. PEREZ: Your Honor, I'll try to be as brief as possible. I do have a witness here that I could proffer, Mr. Brusco. But let me just highlight three things. Number one, with respect to the limitations issue, that's not an issue at all. We can enter into a tolling agreement. They filed a proof of claim. That's not an issue. So to the extent that they just want the ability to bring litigation, that raises many of the same issues that are already pending in front of the BAP. That's not an issue whatsoever.

So, Your Honor, when you go to the motion to lift stay so that they can sell property, their cause is, is that the settlement is dead. And, Your Honor, with all due respect to my co-counsel, it's just simply not correct. The difference -- the difference between the bid and the ask after they came back and said we can't do this and then we made a counterproposal is 630,000 dollars. That is the difference. Your Honor, today we're making a large dent in that. So to say that we're miles apart, the difference is 630,000 dollars. And on all of these allegations about it was unacceptable and we weren't going to get anything and the unsecured creditors weren't going to receive anything, I mean, that's all absolutely -- there's no factual basis for that, Your Honor. So to the extent that the

cause is that the settlement -- I think the only -- the only thing that the Court can surmise on the basis of the record in front of you is exactly what the Court said. They've decided to abandon this and pursue litigation. That's it. There's no other -- there's no cause as a result of the fact that we can't come together because it was 630,000 dollars. I dare say that people trying to get to a settlement can breach 630,000 dollars in the context of both of these cases.

The allegations about the -- we have 5,000 acres and stuff like -- they also have fourteen -- approximately fourteen million dollars of cash collateral that's been depleted -- you know, from twenty million starting at the beginning of the case in order to maintain the property. So that's not an argument.

Yes, we did object the last time they sought -- use cash collateral because they didn't -- we hadn't heard anything after the last proposal. But if Mr. Brusco testifies, and I'm happy to proffer him, I mean, he's going to say, we made this counteroffer. We heard nothing until I called as a result of this case and said what's going on. I mean, this is ridiculous. Why can't we settle this?

THE COURT: I don't think I need testimony. This is the first hearing on a contested matter. This testimony is not appropriate except in extraordinary circumstances under our local rules and the case management order. And I'm familiar generally with the dispute. The issue here is a fairly

standard application of Sonnax factors to a nonstandard situation because it involves parallel bankruptcy proceedings. I'm very familiar with the SunCal cases as a result of a motion for relief from the stay that was brought in November of 2008. So this has been part of the landscape of the Lehman bankruptcy case for a very long time.

What do you say to the Sonnax factors?

MR. PEREZ: Well, Your Honor, I can certainly go through them. And I don't think that -- I mean, I don't believe judicial economy is going to be served by litigating this thing ad nauseum when there hasn't even been an effort to settle this. We're perfectly happy -- if the Court says, you got to go to mediation, we're perfectly happy to do that to see -- if we need adult supervision, I mean, I don't think we do, but if the Court thinks we need adult supervision to see if we can breach a gap, we're perfectly happy to do that. But as it relates to that California is the most expedient forum, we just don't think that spending millions and millions of dollars on litigation when you haven't even tried to broach the 630,000 dollar difference makes any sense whatsoever.

THE COURT: Let me parse the question a little more finely. Reading the papers with some care, I find that there really is a two-part question here. One is whether or not there should be stay relief to pursue litigation. The other is whether there should be stay relief to pursue a sale of the

property. My sense from looking at some of the papers that had been filed is that maybe the sale of the property wouldn't be as major an issue from Lehman's perspective as having litigation unleashed in California. How do the Sonnax factors apply as to their request that this forty million dollar transaction be pursued?

MR. PEREZ: Couple things, Your Honor. They did request, basically, that we be stripped of our credit lien rights. You know and that implies that we don't have a good lien. So to the extent that their premise in their sale motion is that we're being stripped of our credit lien rights then that -- the Sonnax factors clearly fall in our favor on that issue because, clearly, the balance of the harms are going to be with respect to us.

And the settlement that was negotiated over a year and which the Court -- you know, the statements made by the trustee in connection with the compromise motion -- I mean, they're just running away from those statements that it would be protractive litigation to determine the liens. All of those things that they said in order to get the motion approved which was set for hearing and continued and continued as a result of this alleged ambiguity. They would have to completely back off for all of those things in order for the Sonnax factors to say that it's judicially economic to do it and that the balance of the harms don't tip in our favor.

Your Honor, in our pleading, we said that to the extent that the Court conditioned the automatic -- lifting of the automatic stay with our credit bid rights and after we determine that, in fact, we don't have a settlement and we can't broach the 630,000 dollars then I think that that might be appropriate. And remember, Your Honor, Lehman acts here -- Lehman has been -- this motion is in Lehman's capacity as a lender. Lehman is also the collateral agent. I don't represent Lehman in connection with their being the collateral agent. Cadwalader does that. So I'm here representing Lehman only as a lender. And it has pieces of the first, the second and the third lien, all liens on the property.

So as it relates to their ability to basically deny our right to credit bid and to protect what was the basis of the prior settlement, I think that implies the balance of the harms is in our favor on that, Your Honor.

THE COURT: Well, assuming for the sake of discussion that it is the bankruptcy court in California that determines whether or not you have a credit bid right, and assuming further that Lehman has access to cash to protect its positions with respect to the value of the property and could even be a bidder -- which, if I recall correctly, was an issue in the Philadelphia Newspapers case. Assuming I just rather simply were to decide that allowing the sale of the property to proceed does not harm Lehman Brothers because you can always go

into bankruptcy court in California and persuade, if you're successful, Judge Smith that you should be entitled to pursue your credit bidding rights, how are you hurt?

MR. PEREZ: Well, Your Honor, a couple of things. Number one, Lehman only holds thirty percent of the first lien debt. So we have a syndicate that has seventy percent. We also have fifteen percent of the second lien and we have sixty-five percent of the third lien. So a large amount of Lehman's exposure is not in the first lien. So we only control less than a third of the first lien. So the Court's initial comment -- I don't -- that premise I don't think is necessarily correct.

THE COURT: Where's counsel for that entity?

MR. PEREZ: Well, it's a syndicate of about fifteen banks.

THE COURT: So who's representing that syndicate?

MR. PEREZ: Cadwalader represents Lehman as agent for that syndicate.

THE COURT: Did they join in your papers or did they file separate papers?

MR. PEREZ: No, Your Honor, 'cause it was directed at Lehman as a lender. It wasn't directed -- it didn't implicate the other parties or not in bankruptcy.

THE COURT: So if those other parties have the ability upon a sale of the property to protect their interests, can't

Lehman, in effect, be part of the crowd and protected by the benefits of the crowd's actions?

MR. PEREZ: Your Honor, I believe that if Mr. Brusco were to testify on that particular issue, I think the answer is no because some of the other members of that crowd are CLOs and CDOs which don't have the ability to do that. Very different than what the position is that Lehman finds itself in. So I don't believe that's correct.

But also, Your Honor, we first learned of a possible -- of a marketing of the property or of the fact that they've been out there marketing and they have this thing -- we first learned of this just a few days ago after I started conversations in response to this. We have no visibili -- we're the largest creditor. The first, second and third liens are owed 395 million dollars plus. We learned about this stuff just in the last hours, not even days, not even weeks. So after we made our last proposal, there was nothing until the discussions which, frankly -- which I started. And after that occurred, Your Honor, we received this -- I mean, we saw this offer last night at 9:00 for the first time. We didn't know anything about any of this until maybe the day or two before that. So the fact -- when they're saying there's been this marketing process, they have a motion on file to hire a broker and they want 50,000 dollars to start the marketing process. So all of this talk about this has been going on for a long

time and people have been marketing it for a long time and this has all been going on, that's absolutely news to the person -- the lienholder on the property that has a substantial stake on the property.

So to that extent, Your Honor, that has not been -- that is not -- yeah, they came in with a document this morning or last night. We haven't had a chance to review it. Don't know who it is or any of the bona fides. Not to say that it might not be appropriate and we're certainly not saying that it isn't appropriate, but we just don't know. And there's certainly not been a marketing process that we've been involved in or that we've had anything to do with. This is all kind of -- it is a litigation tactic, unfortunately, and it shouldn't be.

THE COURT: You're saying the sale of the property that's proposed is part of the litigation tactic?

MR. PEREZ: No. I don't think the sale of the property is part of the litigation tactic but having it sprung on us and not engaging us in this process is certainly part of the litigation process (sic).

THE COURT: Okay.

MR. PEREZ: We can't even say yea or nay on it because we don't know.

THE COURT: Okay. We've given this quite a lot of time already. What's King & Spaulding's role in all this?

MR. PEREZ: Your Honor, King & Spaulding represents LCPI as a lender in that specific property. And the reason that occurred, Your Honor, is at the beginning of the case, there's another Lehman entity that is now managed by third parties which had originally, at the very beginning of the case, was managed by A&M. And so, it was felt at the time that since they were managed by A&M that we couldn't represent them. So that's the difference.

There are other Lehman -- the other -- Lehman Lakeside, which is a fund, is now managed separately and represented by Kirkland & Ellis. And, in fact, LCPI is somewhat adverse to them at this point.

THE COURT: By Kirkland & Ellis or King & Spaulding?

MR. PEREZ: Kirkland & Ellis represents Lehman Lakeside. King & Spaulding represents LCPI in conne -- as a lender in the California action.

THE COURT: All right. I'm sorry I asked because this becomes more complicated than I even thought it was. Okay.

Is there anything more on this from the trustee's perspective? I think I've heard enough to make some statements that I hope are helpful. But I'll hear anything more you want to say. I think I know the issues.

MR. MARTICELLO: May I just make one brief point, Your Honor?

THE COURT: Sure.

MR. MARTICELLO: I think what Your Honor identified as being kind of a two-issue analysis is correct. And I think a fair compromise is to let us to go forward with the sale motion relief in light of LCPI's willingness to enter into a tolling arrangement. We can deal with the litigation later. But we can move forward with the sale relief. Every harm LCPI stood up here and identified is an issue that will be dealt with on regular notice in California: marketing, the price, the credit bid. It will all be dealt with. They're already participating in both forums. He's identified three counsel just standing up here today that are involved in the case. So they'll be protected. That's all I have, Your Honor.

THE COURT: Okay. I know that the creditors' committee filed some responsive papers that reserved rights on the question of the sale of the property. So let me give committee counsel an opportunity to comment on that.

MR. O'DONNELL: Yes, Your Honor. I think we would support the debtor in all of the other positions they've taken. We were of the view until -- and when we filed our pleading, there was no APA on file. We now have an APA that we got it late last night. There are no bidding procedures or any other indication as to how the sale process has been conducted to date or how it will be conducted going forward. And our view is the Court shouldn't be in a position to rule on the appropriateness of -- really, from the stay for a sale process.

It hasn't been adequately presented to the Court. So we would ask that they -- that at least the sale motion be made available before the Court rules on the relief requested.

THE COURT: Okay.

MR. PEREZ: Your Honor, can I just say one last thing? I apologize.

THE COURT: Sure.

MR. PEREZ: But -- and perhaps I want to make sure that I answered your question correctly. To the extent that the sale motion implies that our liens are going to be stripped and we were going to be denied our credit bid right, that is, in fact, a litigation tactic. So that's the result of that, Your Honor.

(Pause)

THE COURT: Okay. I understand the frustration of counsel for the trustee in the SunCal Master Debtors bankruptcy cases in California. But I also sense as a result of this argument and the information developed during colloquy that this really is a litigation tactic. I'm not saying there's anything wrong with the adoption of a litigation tactic in this case that may benefit the trustee in his negotiations and plan administration in California. But this emperor has no clothes. This is a unabashed attempt on the part of the trustee to take steps in California that are calculated to be detrimental to the interest of the Lehman estate.

I'm sensitive to the fact that this has been going on for a very long time. But I'm equally sensitive to the fact that, admittedly, for a period of three or four months, a very well developed agreement to settle all differences with Lehman appears to have been abandoned.

I'm not going to rule on the motion today. And I'm going to propose that it be carried to the next omnibus hearing where I may consider stay relief in connection with a sale process of the property that is otherwise consensual from the perspective of the Lehman estate. I'm also going to direct that the parties return to the negotiating table and endeavor between now and the next omnibus hearing to resolve all issues not just those relating to the sale process. I note that the original term sheet attached to Mr. Steinberg's declaration provides for a sale of the property pursuant to a plan. That suggests that the sale of the asset is not really the issue. It's the manner in which it's sold and the effect of the sale upon the rights of Lehman as secured creditor. The parties simply need to talk to one another again.

I'm otherwise reserving judgment on the motion and will consider it at the next omnibus hearing.

MR. PEREZ: Thank you, Your Honor.

MR. MARTICELLO: Thank you, Your Honor.

MR. PEREZ: I believe matter number 6 is a Jones Day matter, Your Honor --

THE COURT: Okay.

MR. PEREZ: -- and I believe all the rest of them after that. May I be excused?

THE COURT: You may be.

(Pause)

THE COURT: You can't find a seat?

(Pause)

MR. ENGMAN: Thank you, Your Honor. Richard Engman of Jones Day on behalf of the partner LCPI in this case. Your Honor, we're here because on May 29th, 2010, Greenbrier Holdings LLC, an entity that LPCI (sic) is both a lender and an equity owner of, took the position for the first time that the filing of LPC -- excuse me, LCPI's Chapter 11 filing caused the forfeiture of LCPI's ownership interest, its membership interest in the LLC and that as a follow-on consequence of the loss of those membership interests, the elected mana -- LCPI's elected manager never -- effectively, never was a manager of Greenbrier. And as a follow-on consequence of that, for the last evidently twenty months, Greenbrier has been without a quorum of its board of managers.

The concern -- the immediate concern that we have, Your Honor, as Your Honor knows, and I was on the telephone call with you earlier in the week, there are certainly a number of other issues that the parties have been trying to work out and, frankly, we had believed we're making progress on right up

until May 29th. The immediate issue and cause for concern from LCPI was the effect of what I just stated: an entity that by the terms of its own governing documents, if their counsel, and again, we believe it's wrong on both the facts and the law, but the consequence of the position taken by Greenbrier's counsel has been to create a company that, by its own governing documents, can no longer act.

It might help and I know Your Honor has been through the pleadings and we did have a call on the phone. It might help to summarize some of the material facts and some of the history that went -- that -- between the parties before we got to where we are.

THE COURT: Well, since that telephone conference which, if I recall correctly, took place last week, and was dedicated to an emergency motion filed by Greenbrier Minerals in reference to whether it would need to file papers immediately after the July 4th holiday weekend and raising certain questions as to the compliance of the debtors with the provisions of the case management order, that was all resolved by agreement and by direction from the Court. I've read the papers that have been filed and I'm familiar with the facts. So I don't think it's necessary -- you're certainly free to do it -- to go through the facts. I know a lot more about the facts now than I did at the time of that telephone conference. And I have read the declarations of both Mr. McCarthy and Mr.

Furley (sic). So I'm pretty familiar with the facts.

MR. ENGMAN: Okay. Thank you, Your Honor. And we work -- we did appreciate Your Honor's time on that phone call. We did take Your Honor's direction seriously. One of Your Honor's directions was an attempt to not be here today.

THE COURT: Yes. And here you are.

MR. ENGMAN: We did take it seriously. Unfortunately, we haven't been successful. I did want to -- I think if it doesn't come clear -- if it doesn't come through clearly in our papers, to the extent this is -- seems as an attempt of control or takeover or the like, nothing -- by LCPI, that, frankly, just is not the case. LCPI, even prior to this action, did not have majority control of the board, couldn't take any action by itself on the board, needed at least one other manager to carry any motion, to carry any action, could do nothing by itself on its own. As part of in an effort to not be here today, we offered -- there's five managers on the board. Each one of them can have one vote. We'll only take one vote. We don't need the increase that's in there. Unfortunately, we haven't been able to resolve them on something like that.

I think some of the facts or at least pointing out some of the -- actually, I'll change actually. Before I get to the facts, because at the end of the day, I think the facts in reading the document, while relevant, if the position taken by Greenbrier wasn't dramatically and unequivocally just opposite

of the law, especially in this district, then the facts in reading them and being very specific about the terms would be important. But perhaps in an effort to move quicker, as the committee pointed out in the supplemental pleading in support that they filed, the Section 18.304 of the Delaware Limited Liability Act, which is the statute that Greenbrier is relying on for the proposition that upon twenty months ago LCPI's membership interests were forfeit, in pursuant to Section 541 of the Bankruptcy Code, however, that provision would -- is unenforceable and has no -- and can't be relied on by Greenbrier.

In their papers, Greenbrier, while not mentioning 541 -- in fact, I believe that they say in their papers the only provision that arguably might be applicable to prevent this ipso facto issue from applying is 365(e)(1). And their argument with respect to 365(e)(1) is that while ipso facto clauses, whether they be in the contract or as a consequence of law, are ordinarily unenforceable under Bankruptcy Code. (e)(2) represents a specific carve-out from the general rule. And they cite to the Milford case specifically for what I think they argue saves 18.304. The saving in the Milford case is a Delaware chancery court relying on -- looking at an opinion by Judge Farnan in the Delaware district court analyzed 18.304 not to cause a forfeiture in toto of membership interest but separated -- looked at cases applying 365(e)(2) and looked at

what was preempted -- what that Court felt was preempted and what it did apply to and said that participatory and certainly non -- excuse me, certainly economic rights whether the state law would abide it or not, that is an unenforceable ipso facto clause. But Milford drew a distinction between the noneconomic participatory rights that are inherent in the membership interest to conclude that (e)(2) saved the forfeitu -- effectively, saved that aspect of 18.304 and made it applicable to cause the forfeiture of the noneconomic rights.

THE COURT: Let me ask you a question. Is there a dispute between the parties as to the forty-nine percent economic interest that Lehman has? Is there any dispute that you continue to retain that interest?

MR. ENGMAN: Not -- yes. Not for -- not in, I think, in anything that's relevant for our instant concern or for the merits here.

THE COURT: That's why I wanted to hone in on this. The economics. Let's just say for the sake of discussion that there's no dispute, that Lehman continues to hold forty-nine percent of the economics that hasn't been taken away under any reading of Delaware law, okay? Is this current dispute simply about governance?

MR. ENGMAN: Yes. The immediate dispute is. I think contrary -- it's a little difficult to follow sometimes because, contrary to their papers, I think underlying the

governance arguments made here and the -- that 18.304 doesn't affect our economic interest, their underlying argument is that, either as a matter of equity or the like, we shouldn't have forty-nine percent economically, not on account of 18.304 but because of the alleged failure to fund on the part of Lehman as a lender, allegations that part of our subscription for the forty-nine percent was tied up in -- notwithstanding the -- I can't -- maybe I should get back into some of the expressed provisions of the operating agreement because notwithstanding the expressed provisions, the expressed integration clause that says no course of dealing, nothing else will change what's in the written document notwithstanding the provisions in the operating agreement that expressly say we have a forty-nine percent interest. Schedule A that lists us as having a forty-nine percent interest -- I believe it's Section 2.4 -- or, excuse me, 2.8 that obligates the board of managers to promptly modify and amend Schedule A to the extent there's any change to any of the membership interest notwithstanding that for the last twenty months Schedule A hasn't changed.

At every single meeting of the board, all of the minutes prepared by the corporate secretary of Greenbrier start with the proviso Present at the board were the following -- were Bill Karis, Jack McCarth -- were managers, excuse me, Bill Karis, Jack McCarthy. Then it goes on to say, "In addition,

also attending was legal counsel, Don Malecki, and also attending and if there was anyone other than a manager or a legal counsel, identifies them as "Others that were attending". In each one of those minutes, we're referred to as a manager. Nothing has changed in the operating agreement. Every -- all the conduct along the way has treated us as a forty-nine percent owner and certainly a manager along the way. I believe the arguments are that notwithstanding that a course of dealing or a failure or the claims against us somehow reduce the -- our economic interest.

One of the reasons I don't want to get too tied in those, is that is the -- I mentioned before, I think that the declaration of Jack McCarthy also touches on it, prior to May 25th. That is the area that I think Lehman Billiards' progress was being made on. Essentially, beginning in October of 2005, at least in earnest, the parties, for a significant period of time, have been discussing the situation and the right thing to do with Greenbrier. I think their general agreement that is something that would maximize the value of Greenbrier is in everyone's interest. The questions have been, I think, four-fold: whether that value would be maximized by a joint sale of Greenbrier together with a -- I'll call it a sister. It's not in a technical sense but a sister company called Midland Coal that produces low sulfur coal that -- and sells it to Greenbrier which Greenbrier mixes to meet its contracts.

Midland is majority owned by the CEO of Greenbrier. So the initial question was, is Greenbrier's value maximized, by selling it separately, apart from Midland figuring out if there's another way to get low sulfur coal, figuring out if the contracts are -- ought to stay in place or should we package them together and sell the two jointly.

The next effort, and I think the real sticking point is, if the decision is that packaging them together maximizes value, how do you allocate value? If a purchaser just is providing you with a purchase price for the package, how do you allocate amongst the two? LCPI's position has been, we need an independent -- an independent source to provide a view on value. Midland is indebted -- there's a fifty million dollar receivable to Greenbrier. There's -- whether or not, Midland is worth more than that receivable, and how much of any sale proceeds ought to go, in addition to just paying off Midland's debt, are questions that ought to be answered by an independent marketer and -- has been LCPI's view.

The other significant issue that I think progress was being made is the net amount of LCPI's claim against the company -- against Greenbrier. As Your Honor knows, LCPI is a lender with over 180 million outstanding. Greenbrier has asserted that a failure to fund on the part of LCPI caused damage and has filed a claim in this case. There had been negotiations regarding how to solve that. And then finally,

the last sharing related issue is, assuming there's proceeds -- excess proceeds from the Greenbrier -- from a Greenbrier maximization, how do you share them among the members with -- and that piece of it is, I think, where, does LCPI own forty-nine percent or should LCPI own forty-nine percent -- it's that last piece of all these puzzles where the forty-nine percent comes in.

THE COURT: Okay. Well, you've said a lot about how complex this is. And assume for a moment that you were successful today and I were to say motion granted, what have you realized as a result of that? And what of the multiple issues you've just described would be settled or resolved or determined? And my impression from what you've said is not very many because the only thing that would happen is that Mr. McCarthy's management rights, presumably, would be preserved but not necessarily in a final and definitive way because these are fundamental questions of contract interpretation in Delaware law.

If I were to grant your motion, it's not clear to me what I've done for you other than give you maybe a stronger negotiating hand in trying to resolve the other disputes that remain.

MR. ENGMAN: You know, I'm not sure that -- that's why I started with the premise of Your Honor's question was, it seems, if we win, not a lot has happened on all these disputes.

THE COURT: Do you agree?

MR. ENGMAN: Absolutely. And that's been the premise of what -- where I started, Your Honor, which was these other things have been thrown into this. But they're not the issue in front of the Court. The issue in front of the Court is the governance of this entity, and --

THE COURT: How can I resolve a governance dispute that's this subtle by granting a motion that's based upon enforcement of the stay?

MR. ENGMAN: I don't believe -- it's why another -- why I started actually and I was going to get into the Footstar line of cases from Judge Hardin and also Judge Gerber's decision in Adelphia. I don't -- at the end of the day, I don't think it is that subtle.

What we're asking you to do, Your Honor, is find that what -- that LCPI did not forfeit its membership interest, did not forfeit its rights as a member under the operating agreement as a consequence of 18.30 -- as a consequence of its Chapter 11 filing. At the end of the day, if there's an argument to be had, either in negotiation, mediation, lifting the stay and going somewhere else, that whatever our membership interests are, ought to be reduced from forty-nine. They're free to make that, but at least in the moment, the agreement is very clear how the votes work and how a quorum is achieved. And the only reason that there isn't currently a quorum is

because of the argument that Lehman's --LCPI's membership interests were forfeited as a consequence of 18.304. Again, I think that that flies in the face of both 541(c) as well as 365(e)(1), especially in the Southern District of New York which applies not the hypothetical test to whether a contract provision is enforceable under (e)(2), but the actual test.

This is the debtor; this is not the trustee -- they're not seeking to enforce this against the trustee, they're not seeking to enforce it against an assignee. They're seeking to enforce a forfeiture provision against the debtor. And I think the Footstar line of cases in this district have made -- and I acknowledge that other districts have come to different -- have -- read (e)(2) differently, but not here. And, frankly, I think Judge Hardin got it right and Judge Gerber, in his decision in Adelphia, in referring to the Footstar line of cases and cites Judge Hardin, not only refers to the -- he didn't use the word comity, but to the general rule in this district where Courts generally do agree with each other on issues that haven't been decided by the Second Circuit. In a footnote, he makes it clear that he's not just simply based on that general rule agreeing with Judge Hardin, but that Judge Gerber thinks that he -- that Judge Hardin absolutely got the issue right. And, frankly, Your Honor, so do we. It's a plain language issue.

The (e)(2) only applies if they -- ipso facto clause

is being asserted against a trustee or an assignee. The debtor is neither, as Judge Hardin points out. The Code knows how to use the difference between debtor or debtor in possession while a debtor is subject to the limitations -- the same limitations as a trustee, it's not the same thing as a trustee and I think I would urge it -- Your Honor, to -- that under Footstar and Adelphia, the issue before us just simply isn't one, that 18.304 is simply preempted by Section 365(e), and as well as Section 561.

That said, I think, in addition to simply being preempted, even without -- next, without again, trying to -- while I think the documents are clear, I can under -- I can -- I don't think Your Honor has to pick through the documents in order to determine whether or not they over -- the default section of 18.304 applies. Because, again, 18.305 -- or 18.304, the Delaware LLC Act, only applies to cause of forfeiture if, assuming preemption doesn't apply, 18.304 would only cause a forfeiture if the operating agreement doesn't otherwise deal with membership interest. Again, the -- Greenbrier attemp -- makes their argument based on what it really means is economic interests and yes, there is a nine-seven in our operating agreement, expressly provides that upon a sale -- or upon a filing, the company can acquire the membership interest of the entity that filed. What that really means is just that economic interest that isn't terminated as a

consequence of 18.304.

The problem with that argument is the definition of membership interest in the operating agreement expressly includes, not just the economic interest, which it also expressly includes the economic interest, but also expressly includes all of the participatory management and voting rights of a member. And given that, just on its face, it is a section that deals with a member's intere -- with membership of a member that has filed bankruptcy. If -- and under 18.304, if the operating agreement deals with what happens to a member upon a member's bankruptcy, then the rest of 18.304 doesn't -- is irrelevant, it doesn't apply.

Lastly, even if preemption didn't apply, even if the document -- even if the agreement wasn't -- didn't take -- contain a provision that -- for dealing with a member's interest in bankruptcy, even if neither of that applied, you've got waiver and consent issues that for twenty months we've been operating as a manager, all of the conduct has been as if we own -- that we are a member, that our manager is a manager. The provision in 18.304, there's two ways that 18.304 doesn't apply. Either because the operating agreement says -- has some other provision dealing with a member's filing, or if all of the other members consent. And, again, I go back to every single board minute in this case that lists every member including Jack McCarthy and would argue that sitting in board

meetings, treating Jack McCarthy as a board member, resolving to have Jack McCarthy be the compensation committee to negotiate a compensation for the CEO are all consents to Jack McCarty being a manager of the entity.

As Your -- not that long ago, Your Honor decided the Benevante (ph.) case, which had similar issues in that for a long time the contract counterparty in that case just didn't do anything and didn't do -- what they were supposed to do was either terminate the agreement or pay the swap payments that were due and owing to the debtor; they just sat back and relied on a provision that said the debtors -- filing is a default and the nondefaulting party doesn't have to make payments to the defaulting party. After a period of time, on a motion to enforce the automatic stay, Your Honor ultimately held that in a -- this is not what Your Honor held, but effectively it was use it or lose it. You can't sit around for that long in the case and not paying a debtor. You had a right to terminate. You had a right not to make these payments, but you had a right to deal with that in a timely manner.

Here, the first instance that we even heard about that anyone at Greenbrier thought that there was an issue regarding our membership, LCPI's membership, was fourteen months after LCPI filed and then, that was in the context of the e-mail which I know Your Honor has already seen in our pleadings, but an e-mail that the first 18.304 doesn't make this an economic

versus participatory argument. In fact, the exact opposite; the argument in December had nothing to do with our membership -- our voting interests, our participatory interest, the argument in December was, "As a consequence of 18.304, you don't have forty-nine percent economic interest, so this sharing argument that -- this sharing proposal that you gave to us is inadequate. Go back to the drawing boards, LCPI, because you don't have forty-nine percent because of 18.304."

Flash forward five months to May 25th when there's a governance issue that is -- that at least -- that went against at least one manager, now all of the sudden, the argument is not that 18.304 caused us to forfeit our economic interest, the argument is 18.304, all it did was make you lose your voting rights, which, by the way, has all these other negative consequences to the company itself. We don't have an answer for them, but we're willing to trade a company that can't operate for not having the ability of this vote that was carried by a ten to one vote. In fairness, four to five, not counting the way the voting works, but four persons voting against one, in order to avoid the effects of that vote, we're willing to throw this company into a situation that, frankly, we believe is untenable, unsafe.

It's not -- we mentioned it in our pleadings; the operating agreement is express -- and I'm sorry to keep going back to the operating agreement, but it really is express on

these terms. The company cannot operate, cannot conduct business except by and through and is authorized by its board of managers. It can't -- it can hire -- it can retain a president to the extent that president is appointed by the board of managers. The board of managers, according to the debtors' argument, hasn't been in existence for the last twenty months. Your Honor had said that you've read the declarations of both Bill Karis and Joe Turley. One of the arguments -- nowhere in that argument or -- and conveniently forgotten, I guess, by the debtors, is that the appointment of Bill Turley as an independent manager is an appointment that is made at the direc -- by all four of the voting members, jointly. So, if Jack McCarthy isn't a manager because LCPI couldn't appoint him, under the operating agreement, Bill Karris isn't a manager because LCPI wasn't there to appoint him.

We don't think that -- again, we don't think that that's the case. We think that that argument is wrong on both the facts and the law, but it is the conclusion -- if they're right, that's the concl -- if they're right that LCPI hasn't had a vote for fourteen months and they haven't found a way to amend the operating agreement which expressly states that the Class D member has to vote to appoint -- is part of the joint vote to appoint even the independent manager, we're not down to four managers, we're down to three managers of this entity.

THE COURT: But that's not really your concern. Your

concern is getting Mr. McCarthy back into the room and issues relating to whether or not the entity is engaged in ultra vires acts right now may make for good legal argument, but it doesn't have much to do with whether or not the business is functioning. My understanding is it's mining coal and presumably, selling it.

MR. ENGMAN: And I don't want to -- as I said on the call that we had, Your Honor, I'm -- we are being rational and I don't want to sound like Chicken Little. We're not claiming the sky is falling, but there is a ephemeral issue when a company in the lon -- certainly the longer it goes on it's a real issue. I'm not sure how to quantify the danger or the concern, but it's real. Real enough that my client has offered to be one -- just one vote among all five. And we're -- and I would make that suggestion to Your Honor. If Your Honor noted that there lots of other things that need to be resolved, we're happy to keep talking to the company about all of those other issues, we're happy to keep -- whether that be through mediation or just ongoing negotiations. But we think that this management issue needs to be resolved and we're willing to just be one vote among five. But there needs -- I can't think of a fairer answer than that.

THE COURT: Okay. Let me hear from Mr. Schorling.

MR. SCHORLING: May it please the Court, William Schorling, Buchanan Ingersoll & Rooney on behalf of Greenbrier

Minerals Holdings LLC.

Your Honor, as the argument has demonstrated so far, there are a number of disputes; the effect of Section 18.304 on the Delaware LLC Act is merely one of them. I would note that I hadn't intended to engage in negotiation in front of the Court, but that the other members have countered the debtors' suggestion. The debtor rejected the other members' proposal, we then have gone back to the debtor and asked for -- if there are perhaps areas where we can compromise and we suggested mediation, which is in fact one of the procedures provided for in the operating agreement in Article 12 to try to resolve not just this dispute, but all of the others.

The others are fairly important, dealing with the sale of the mine, the impact of the debtors' breach. The debtor notes in its motion that it performed through the sixth amendment; unfortunately there was a seventh amendment. They failed to fund a ten million dollar request made and approved prior to filing of the petition, the debtors' petition and then anticipatorily repudiated by saying that they would not fund the remaining thirty-nine million dollars. There, following the in and out of the Midland mine, the debtors stopped negotiating some two months ago and have not resumed. So that is, as of right now, at a stop. Obviously, that informs our view as to why we're here today.

We do view this as an attempt to gain leverage and

sympathy. Whether -- whatever happens with regard to a quorum isn't going to have any impact on the negotiation of the underlying disputes. Everybody has a seat at the table; everybody has to participate because everyone's interest is involved.

THE COURT: Let me stop you in reference to that last statement. Is it Greenbrier's position that regardless of the hat that Mr. McCarthy wears, that he's welcome to be in the room? He needs to be in the room and the resolution of the disputes that we've been talking about cannot occur unless he's in the room?

MR. SCHORLING: That's correct. And I would like to -- our view of history is different from the debtors'. There was no issue as to the manager's duties and powers prior to the appointment of Mr. McCarthy. There was a prior manager who'd been appointed, prior to the debtors' filing its petition; 18.304, on its face, doesn't speak to managers. It speaks to right of members to vote and to participate in management, not on the power of managers to act. The manager who had been appointed by the debtors resigned. Mr. McCarthy was purported to be appointed by the debtors in March of '09.

In December of '09, Mr. Karis, the independent manager, raised the issue as to whether or not the debtor had an ability to vote. It went to more than the debtors' economic interest. From and after the December 17th memorandum which

was attached to the pleadings here, at all of the managers' meetings, the meeting began with a statement that the nondebtor parties were reserving their rights as to the debtors' interest in Greenbrier and right to participate. All of the actions until we get to the main meeting are unanimous. So that no one raised the issue of whether -- of the impact of the debtors having filed bankruptcy on its interest, other than Mr. Karis' December 17th memo, until the main meeting.

Following that meeting, as Mr. Karis says in his declaration, and again, he's the independent manager, he asked Buchanan Ingersoll & Rooney to look at the impact of the debtors' bankruptcy on its interest and it was at that time that we discovered that there was an unusual provision in the operating agreement which required more than a majority for a quorum. The language is, more than six to be present for a quorum. That's when the debtor now raises the issue about the quorum, but it's been clear since December that there was an issue about the debtor's right to vote while the parties were negotiating, while everything was being done consensually. There wasn't any reason to go further. Indeed, it would have been counterproductive to the negotiations.

We get here today --

THE COURT: Mr. Schorling, I just want to break in and ask a question, not in your capacity as an advocate, but in your capacity as counsel for an entity that is currently under

something of a governance cloud. Isn't it in your client's best interest that there be some kind of prompt resolution of disputes in reference to acts of the board of managers and the allegations that had been made publicly now concerning ultra vires acts and a governance vacuum of sorts, particularly if what you're trying to accomplish is a capital transaction that involves a disposition of the mine's assets.

MR. SCHORLING: Your Honor, the disposition of the mine's assets as I indicated, because of all the interests that are implicated, that is going to go forward one way or the other, whether we have a quorum and because all the members have to participate in that, including the debtor because of the various interests. The issue on governance, do we have an interest in --

THE COURT: What are fighting about here?

MR. SCHORLING: Do we have an interest in a quorum? Yes, we do. The nondebtor members have made a counterproposal, and I -- and that is all of the nondebtor members have made a counterproposal. The debtor rejected it; they don't view this as the appropriate forum --

THE COURT: It's not the appropriate forum.

MR. SCHORLING: -- in which to negotiate. But I want the Court to be clear. We have proceeded, we are proceeding. The other nondebtor members are proceeding; there is a provision in the agreement, I think it's Section 9.7 which

deals with amendments to the operating agreement. We could resort to that. The debtor is likely to take issue with that because if the other members take a position that the debtor can't vote, the debtor's vote wouldn't count. But there could be an amendment to the LLC operating agreement which would do away with the quorum issue. Now, the voting issue; we don't have to touch voting, just deal with the quorum issue.

The issue that the debtor raises as to why it's so critical that we address that issue -- it's important; it's not critical. If you look at the action that the board of managers has taken, as outlined in the debtors' motion of footnote 4, they approved a release of claims. There was credit to Midland for some commissions earned and pursuit of a coal sales agreement, it was with ArcelorMittal. Not -- there's nothing time sensitive about any of that. The debtor has management in place, it has professional management in place. It's an operating deep mine.

The duties are delegated to the officers by Section 5.3 which is on page 26 of the operating agreement which is Exhibit C. The provisions that the debtor points to about this being manager-managed, are those typical provisions in an LLC agreement, which differentiate between manager action and member action. It's a board of manager-managed LLC, not a member-managed LLC. That's what those provisions go to; they don't go to the delegation of duties to the officers. That's

done in a separate provision, Section 5.3, they've been delegated, the mine can operate. It's executive decisions that require the board of management decision making.

To go back to the sale, the only sale that's going to occur is one that's consensual. At which point we aren't going to have an issue. It will be approved.

THE COURT: Well, tell me why that has to happen. I mean, if I'm understanding what this dispute is principally about, it's about the rights of Lehman in its capacity as an equity owner of a certain percentage of the business of Greenbrier Minerals. And we have this dispute because there is controversy concerning the rights of Lehman's representative to vote in reference to entity action and to participate in entity decision making. Are you saying now that that's really not an issue, because in order to deal with something as fundamental as a sale of the assets of the business or substantially all the assets of the business, which apparently is currently under contemplation, that they be involved in all events? And if so, under what authority?

MR. SCHORLING: A sale of the business has to take into account a resolution of Lehman's economic interest and membership interest and capacity as a lender in any resolution of the sale. That won't be resolved other than through litigation which nobody wants, or through a consensual agreement. It is our view that we were, two months ago, fairly

close to a consensual resolution of how to deal with the sale and with the impact of Lehman's failure to fund on its membership interest, both economic and managerial.

THE COURT: And what's your view as to the best means to accomplish that desirable objective?

MR. SCHORLING: Mediation. Mediation, arbitration if we can't get beyond that. Hopefully -- well, no, the best resolution? Negotiation. Clearly it's in the parties' interests to negotiate a resolution. Failing that, and as Article 12 provides, there is a provision for mediation. It's contractual, so we've got a right to mediation.

THE COURT: Let me ask you this additional question. The debtors, both in the telephone conference that has been adverted to in earlier colloquy and in papers that have been filed, suggest that there are some significant health and safety issues that may present themselves because the business is operating a coal mine. And presumably, there is some unforeseeable risk of an emergency associated with that operation. Assuming for a moment that there were such an emergency, and there were an overhang of doubt concerning the capacity of the business to function at the management level, how would that problem be resolved? Or is it a problem in your view?

MR. SCHORLING: I suppose it's a hypothetical problem --

THE COURT: Right, well I'm asking it.

MR. SCHORLING: -- and there are lots of hypothetical issues. The mine is operating safely, it has always operated safely. There is professional management in place. Indeed, even when the debtor proposed replacing Mr. Turley, he was going to be retained at his salary in his management capacity, so that there's no issue here about the capability of management. That's not at issue; no one's ever raised that issue. The mine is operating, it's got professional operators. They are the ones who are responsible for making sure that it operates.

THE COURT: I understand, but let's go just to the basics of governance. Management is presumed to be experienced in the mining industry and that's not the issue. The manager has to get direction from its board, particularly if there's something critical going on. How does that happen in the context in which there is a cloud over the ability of the board to function?

MR. SHAW: Your Honor, you're asking a hypothetical -- I'll respond hypothetically. The other members can modify or amend the LLC agreement under Section 9.7 and they can fix the quorum issue. They haven't been engaged in negotiation. We believe that this needs to be a negotiated resolution among all the parties, but they have the right to do so and they could do so if they wanted to.

THE COURT: Well, let me ask you a question that's comparable to the question that I was asking in the earlier matter involving the SunCal negotiated settlement that went into three to four months of hiatus. Without going into the specifics of the negotiations themselves, have negotiations taken place since our last telephone conference that you participated in? Are additional negotiations scheduled and in your capacity now as an advocate, that is, someone who's interested in some kind of peaceful resolution of this, is there promise that ongoing negotiations will produce some kind of favorable outcome here?

MR. SHAW: May I make a slightly long-winded response?

THE COURT: You can make a response as long as you wish. However, it's almost getting to be lunchtime --

MR. SHAW: It's our view that the debtor walked away from the negotiating table two months ago. On the substantive issues, there has been little to no negotiation because the debtor is not communicating. There has been negotiation over the narrow issue presented here. The debtor made a proposal, we responded, the debtor rejected our response. As I said, we asked if there were scenarios where compromise might be possible and in the alternative, if they would agree to mediate. So --

THE COURT: When you said agree to mediate, is that only with respect to the governance issue?

MR. SHAW: It was raised in the governance context, meditation overall would be fine with us.

THE COURT: Okay.

MR. SHAW: So, you know, I can't speak for the debtor, but I can tell you what our view is and that is our view of the facts.

THE COURT: Okay. Based upon what I've heard and without getting into the merits of the underlying dispute that involves an operating agreement and its interpretation, provisions of the Delaware Limited Liability Company Law and the interpretation of Section 18.304 of that law, questions of waiver and estoppel and consent, it seems to me that it is probably in the best interest of the parties to this dispute for me not to rule today, but to encourage ongoing conversations along the lines described by Mr. Schorling focused, at least initially, on resolution of the voting issue within a board of managers of Greenbrier Minerals Holdings and the question of Mr. McCarthy's role or the role of any successor who may take Mr. McCarthy's place.

Mr. Schorling has made a variety of representations which I accept that the Lehman representative needs to be a part of the solution here and that it's in the best interest of Greenbrier Minerals that there be such a solution, including a possible sale of the business in a manner that takes into account the high sulfur content of the coal generated by

Greenbrier and allows that to be mixed with other coal of low sulfur quality. Nobody said that but I read that somewhere.

I think, under the circumstances, the parties should meet and confer with that goal in mind, recognizing that a failure to reach an understanding on governance will lead to further litigation, not only as it relates to governance, but all the other subsidiary issues that have been identified by the parties in their pleadings that I have read.

I also note that while there is a dispute between the parties as to whether enforcement of the automatic stay is the proper procedural means to achieve the end of resolving the governance issue that's before the Court, I believe that I do not have at this juncture a sufficient record in order to make a determination, at least as it relates to the questions of consent and waiver and course of conduct of the parties at various meetings that took place during the period when everybody was acting consensually after the Lehman bankruptcy filing.

Accordingly, I wouldn't be prepared to rule today even if I wanted to because I think I would need more of a record than I have. And I would want to see Mr. McCarthy in person; I'd want to see Mr. Turley, I'd want to see the independent manager and know more about the way this enterprise actually has functioned and governed itself in the ordinary course, particularly since the commencement of the bankruptcy case.

So my ruling for today is that I'm not ruling but I am encouraging the parties to do exactly what Mr. Schorling has said he believes needs to be done. And if the parties can negotiate a resolution, that would be, obviously, the best outcome. If there is a fundamental difficulty in reasonable discourse, without getting into the question of whether the disputes are fundamentally arbitrable or subject to a mediation provision in the agreement, as to which I am not making any judgment at this time, I believe it will be useful for a third party to act as an intermediary in order to help get to a resolution.

I note this because as was clear from the argument of debtors' counsel, even were I to rule that the actions of Greenbrier constituted a stay violation or maybe a continuing stay violation as it relates to the interests of Lehman as holder of membership interests in Greenbrier, that doesn't solve the problem. It's just one step along the way toward a possible solution. So not only do I encourage that cooperative dialogue, but I would like to be kept advised not as to the specifics but as to the level of progress being made and I would suggest that we schedule a telephone conference report to chambers sometime in the next week or two. I'm not micromanaging this to tell you when that call should be placed, but my notion of this is that the leash on this needs to be fairly short.

And if the parties are not making material progress in reaching some kind of business solution here, that conversation will turn into a scheduling conference to talk about when next we'll be in court; what discovery, if any, the parties may need in order to prepare for an evidentiary hearing. And the scheduling of that hearing for a day that will not be on the omnibus calendar because I presume it will take more time. And I'll see you when next I see you and I'll hear from you in the next week or two.

Please work cooperatively to at least find a date and time when I will be in chambers for that call and you can find that out by checking with my courtroom deputy. And that's all I have to say on this right now.

MR. SHAW: Thank you, Your Honor.

THE COURT: Okay. Norton Gold Fields.

MR. GOLDFARB: Good morning, Your Honor. My name is James Goldfarb. I'm with the law firm of Jones Day; we represent the debtors and debtors in possession. To cut to the chase, we have some positive news to report to you and I think this will be a lot quicker than what's gone before, this morning.

We were last before you on May 12th. The reason we were here was to have a hearing on debtors' motion. It was debtors' motion to compel and also to pursue a violation of the automatic stay against a counterparty of one of the

constituents of the estate, that would be Norton Gold Field (sic), which is an Australian gold producer and mining operation. Specifically, it was the estate's contention that Norton was not paying as it was obligated to under a swap arrangement that it had dealing with the gold prices with this constituent number of the estate, specifically LBCC, Lehman Brothers Commercial Corporation.

Your Honor suggested that the parties, rather than have a full-blown hearing, mediate the dispute. The parties took Your Honor up on that suggestion and we've made substantial progress towards a positive resolution and a consensual resolution. There is still some more work to be done but after confirming with Mr. Tillinghast, who represents Norton, the feeling is there's no need to have a hearing on the motion today and we would ask to adjourn until the next omnibus date, giving the parties an opportunity to finalize along the positive path that they've embarked on.

THE COURT: Fine. That's a very promising report and it's too bad you had to spend the whole day to make it, but -- just in terms of your use of time. But I'll see you next month and I hope you continue to make progress.

MR. GOLDFARB: Thank you, Your Honor.

MR. MILLER: Good morning, Your Honor.

THE COURT: It's actually good afternoon, now. It's 12:30.

MR. MILLER: Happy Bastille Day. Your Honor, the next matter -- that concludes the omnibus calendar. The next matter, I think, Your Honor, is not on the record; it was in connection with a telephone conference that was scheduled for yesterday afternoon which Your Honor kindly agreed to put over to today because of an inconvenience on my part. So I don't know whether Your Honor wants this on the record or off the record. It relates to a request by White & Case for, I think, a status conference. And we have a position.

THE COURT: Well, we have a very full courtroom still and I'm guessing that we have as many people here as we have in part because of the telephone conference that you just described and the request made by the ad hoc creditors represented by White & Case to discuss procedures relating to the plan process here. It may be that people are here for a different reason or --

MR. MILLER: I believe they're all here for that, Your Honor.

THE COURT: I kind of figured that. So let's hear from White & Case on what they are proposing at this point. Their papers had requested an opportunity to speak at today's hearing and here they are.

MR. SHORE: Thank you, Your Honor. Chris Shore from White & Case for the ad hoc committee of Lehman Brothers Creditors. And we represent about sixteen billion dollars of

claims in the case. We filed an objection on June 29th that, Your Honor's correct, requested today's conference. And the nature of that objection, I don't want to discuss today. Actually, I think we can handle this quickly; it's really just a request to establish a notice procedure to a next hearing. And let me explain what I mean by that.

We understand -- we filed the objection. I've heard from a number of people, I've discussed it with the committee, I've discussed it with the debtors and I understand they may -- both the committee and the debtors may have something to set today, but there's been some confusion about whether we would have the status conference today that was only resolved yesterday afternoon. So I'm not even sure that everybody who wanted to speak on procedures would be here today and I think that's probably premature.

What we'd like to do right now is set a date, whether it's at the next omnibus or some other date that's convenient to the Court to have people back to discuss two issues; whether there need to be procedures at all with respect to inter-debtor issues, the dissemination of information and the manner of conducting depositions and the like, and I understand the debtors have some firm views on that, and then if there are going to proceed to be procedures, what those procedures would be like.

The committee has offered to solicit views from

creditors as to what procedures they would find acceptable, with the idea being in the interim between now and that scheduled hearing, we'd get as close as we could to some sort of negotiated order and then have the Court resolve, if it all, any issues that remain at that point, including the dating issue of whether there should be procedures at all. And that way, we can get people and get notice out to people as inclusively as possible to provide what is essentially a notice and comment period, so that we can come back to Your Honor with a more fully baked set of procedures.

MR. MILLER: Your Honor, in the spirit of all the discussion about consensual proceedings this morning, we certainly have no objection to what Mr. Shore has said. But I would like to point out, Your Honor, that this all started with the filing of what is denominated as a preliminary objection to the plan that was filed on March 14th on the disclosure statement which was filed on April 15th of this year. Though we tried to point out to Mr. Shore and Mr. Uzzi, Your Honor, that plan that's on file which was filed, as Your Honor well knows, because of the eighteen-month limitation. Basically it has served as a catalyst for further negotiations and the position that we have taken is there are constant negotiations going on. We now have, Your Honor, in addition to the ad hoc committee, we have an alliance of LBRF (sic) creditors who have engaged the Blackstone firm as their financial advisor --

MR. MALONEY: LBSF.

MR. MILLER: I'm sorry?

MR. MALONEY: SF.

MR. MILLER: SF -- I'm sorry. Thank you, Tom. Which we have a NDA with Blackstone. We have an NDA that's almost finalized, resolved and could go representing a group in the LBT case. We have other groups that have been involved.

THE COURT: Is that --

MR. MILLER: Maybe I've got the initials wrong. But I'll -- there are multiple negotiations going on, Your Honor. And as Your Honor knows, the protocol meetings are going on. What we have said, Your Honor, is the plan is -- will undergo revision, Your Honor. There's another meeting next week in Berlin with the foreign administrators and receivers, all of which have blossomed off the plan that was filed and lots of comments, Your Honor, and comments, I might say, Your Honor, from the ad hocs also which are being considered.

It was argued that this was preliminary but in light of Mr. Shore's comments, we have no objection, Your Honor, to spending the next period between now and the next omnibus hearing in negotiating a discovery order, protocol, whatever is necessary in this case. But in the context, Your Honor, that the preliminary objection is filed to a plan that's not being prosecuted. That plan is going to be substantially revised, I believe. And a new disclosure statement. So, to a certain

extent, this is premature.

We are also have been in negotiations for a long time, and I don't want to repeat anything anybody else said about parties coming to a stalemate and respective an NDA agreement with AlixPartners, which has been engaged by the ad hoc group, and I use "the group" loosely. Your Honor, we have offered them the same NDA agreement that the Blackstone Group has signed. That's unacceptable. We're still prepared to negotiate with them, Your Honor, and hopefully before -- well before the next omnibus hearing, we will have an NDA and they can go and do their investigation.

The issue here, Your Honor, is practically nobody wants to be restricted. So there is an issue about nonpublic information and how it gets distributed and who has access to that. That's what has to be negotiated, Your Honor. So I would join in Mr. Shore's presentation; we will take the time and try and work out an appropriate order. Thank you, Your Honor.

THE COURT: Okay. It looks like the committee wants to say a few words.

MR. FLECK: Thank you, Your Honor, and good afternoon. Evan Fleck of Milbank Tweed on behalf of the committee. As is evident from the remarks already on this matter, what I was prepared to start with is that from the committee's view there's not much dividing the bits and parties, the ad hoc

group and their request and the debtors. It's also consistent where the committee has been since before the plan was filed that it's appropriate that there be an information sharing process and this is a good opportunity for us to be before the Court. It's not -- certainly not solely because of the ad hoc group's pleading, but it's not really a controversial issue in the committee's view that there should be information sharing pursuant to an appropriate process.

And I also wanted to mention to Your Honor that the committee was prepared to file a pleading to memorialize its position on this but, as was mentioned, it was unclear whether there was going to be an opportunity to speak on this today. That will probably be unnecessary to do that, but we can certainly put it in a written pleading.

Also, Your Honor, I think from the committee's perspective, it's important to note that the issues, the substantive issues that are set forth in the ad hoc group's preliminary objection are important and we think they're important with respect to any plan that is ultimately prosecuted. We are certainly aware of the fact of the current posture of the plan that was filed, why it was filed when it was filed and the fact that a hearing on the disclosure statement has not yet been scheduled. But it's the committee's view that there's not a reason to wait to start to come up with a process, together with all the parties that are relevant,

that want to participate in the process, that will maximize and promote efficiency to getting the information that -- the raw data. To start with the raw data as opposed to jumping into depositions, but start to share the raw data that we, the committee, know exists. Obviously, the debtors do and it should be shared among parties.

And that's something there has been a process underway to start to do that, but we think through the filing of the objection and this discussion with the Court today, we'll hopefully jump-start that into a more organized process so that all the parties who want to participate pursuant to an appropriate protective order will be able to do that and draw their own legal conclusions about one issue that's been raised is the appropriateness of substantive consolidation of the debtors' estates. And there may be, through the course of the discussion with the parties-in-interest, other issues that people feel are appropriate to be folded into this process. It's not just any issue, these -- what in the committee's view, it would be issues that are clearly going to be a part of this plan or any plan that would be prosecuted for these estates, to bring these estates out of these proceedings.

As I mentioned, Your Honor, we have been discussing the information sharing process with the debtors and the various constituencies and we are aware of the fact that certain of the financial advisors, two groups that have formed,

have finalized their agreements and it's really, in the committee's view, a matter of converting these nondisclosure agreements that have been put in place into an appropriate protective order. As Mr. Shore mentioned, the committee is happy to perform the role that it has in certain other disputes, although as I said, I don't think this is a true dispute, but an issue that needs to get resolved through a process.

The committee's happy to serve as a clearinghouse for comments, should the Court be receptive to us doing so. And we would expect to, if the Court is willing, work through that process with the relevant parties and come back to the Court with, hopefully, a procedure -- not necessarily the one that was put in place in Adelphia. We've heard from many, many -- we have our own views about that process; we've heard from many creditors about it. But a process that, hopefully, a critical mass of the parties including the debtors and the ad hoc group and others are comfortable with for moving forward and come before the Court, hopefully with something that's acceptable. Otherwise, we would come, identify the issues and look for guidance from the Court for further direction.

THE COURT: Okay. Thanks. It looks like others wish to be heard, just as I was ready to foreclose further comment.

MR. HUEBNER: I could sit down if you'd like, Your Honor, but I'll be extremely brief.

For the record, Your Honor, Marshall Huebner of Davis Polk & Wardwell, here as now co-counsel to Linklaters for LBIE and the foreign administrators of the European entities centered in England. Two brief comments, Your Honor.

Number one, I think it should probably not go unmentioned that the ad hoc committee, of course, expressed a view on a variety of substantive issues about what they don't like about the plan in their pleading and that was really the vehicle for their requesting to begin discovery. We didn't think it was appropriate to file any sort of response on the pleading. We didn't think it was necessarily procedurally appropriate but, of course, it goes without saying that there's a strong second view about the propriety of the plan in the other direction on the treatment of various parties including certain foreign affiliates.

Second, Your Honor, more to the point for today and with this I'll close. I heard, I think, Mr. Shore volunteered, as well as Mr. Fleck, to each be the clearinghouse and essentially hold the pen on these proposed procedures. Given, obviously, that Mr. Shore, with all due respect, is a strong advocate for a specific point of view and a specific outcome on the plan, it's not clear to me that he as a nonfiduciary would ever be the appropriate person to coalesce the comments and hold the pen or the computer. I would probably guess that the debtors would have a much stronger interest in helping design

the discovery procedures around their own plan. We're happy to see what the Court's pleasure is. Mr. Fleck also volunteered. I'm not going to volunteer because I think it's not the job of an individual creditor with a point of view to say, "Oh, I'll help by designing the procedures," but I would have an interest in seeing how and who helps design it.

THE COURT: Okay.

It's always good to know when it's probably best to sit down.

MR. MALONEY: It's probably best, but I just -- Your Honor, Tom Maloney on behalf of Goldman --

THE COURT: That's my way of saying it's probably best to sit down.

MR. MALONEY: I was going to sit down.

THE COURT: Okay. Here's the point. I mean, there are a lot of people in the room, many of whom have been here since 10 a.m. when we started, with a greater interest in this unscripted portion of the agenda than that which was on the agenda. And I don't want, by hearing certain people, to limit the interests of others who may have different clients to get up and say something. This is not the time for comment, really, and Mr. Huebner, in effect, got in last licks.

This is instructive to me as to what's happening behind the scenes. The telephone conference that led to this discussion lasted less than thirty seconds yesterday at 4:30 in

the afternoon and the purpose of the conference was to discuss whether we were going to have a status conference today to talk about the procedures requested by the ad hoc committee represented by White & Case.

Mr. Shore's comments were brief and not particularly controversial. And Mr. Miller's rejoinder, equally brief and not controversial. Let me just tell you what I see happening and what I would propose for next time. At this moment, the Court has no role in establishing procedures for the sharing of information, for the management of that information, for the taking of any discovery with reference to that information and for the development of a protocol in reference to the plan process. That may happen, but it's not before me today.

I do think, though, that this informal discussion, on the record as it turns out, is useful in identifying publicly, for the benefit of those who are taking notes and reporting to third parties, that there is a process that parties are at least thinking about. I also think it is good and useful information to know that there are groups of creditors who are forming with the benefit of sophisticated financial advisors and counsel to assess the plan as it exists and alternatives that may be developed.

I am uncertain as to whether it is a good idea or not to schedule a status conference in reference to this general subject matter as soon as next month. And I am going to allow

the natural processes of the case to percolate. To the extent that the debtors believe that it would be useful and informative to have an agenda item next month dealing, generally, with the topic of communication and information sharing -- I may not have given that the right label, but I think you all know what I'm referring to, I'm prepared to hear that status conference at the next omnibus hearing date, on a special date and also in a different month or two. I am concerned about saying now, "See me in August and we'll talk about this," because it may not yet be ripe. But it may also be useful in terms of providing a public report as to how things are moving along.

I don't really have a clear view of this at the moment because I don't know enough about what's going on and I don't need to know it. It's probably best that I not know it at the moment. So I'm going to leave it to Mr. Miller in consultation with the creditors' committee and other parties-in-interest who've expressed themselves on the record and those who are in the courtroom or may not be in the courtroom who have not yet expressed themselves on the record to determine what's best for the case. And if that means having a status conference next month, fine. If it means having it another time, fine.

We have a calendar at 2:00 relating to adversary proceedings and we're adjourned until then.

(Whereupon these proceedings were concluded at 12:48 p.m.)

I N D E X

R U L I N G S

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

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Date: July 16, 2010